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# Twenty-five years of the Charter of Fundamental Rights of the European Union (CFREU)

Santiago Ripol-Carulla, Yolanda Gamarra, Maria Mut, Eva Nieto Garrido, Maite Zelaia

CEIJ

European Union Law Series: vol. 1

Series Editions: CEIJ e-Books
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Series of European Union Law, vol.1

ISBN: 978-50-7292-896-4 (eBook)
DOI: 10.5281/zenodo.16527525; 10.5281/zenodo.16422194; 10.5281/zenodo.16527586; 10.5281/zenodo.16527659; 10.5281/zenodo.16527737

The present research team was formed to work during the period 2022-2025 on the topic "The effective application of the EU Charter of Fundamental Rights: respect for European principles and values." The research team is funded by the Spanish government.(PI MICINN Ref PID2021-128335OB-I00 (2022-2025)).

Published by CEIJ e-Books, https://ceije-books.rf.gd/

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# 25 years of the Charter of Fundamental Rights of the European Union

Doi: 10.5281/zenodo.16527525

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## The novelty of the Charter

The Charter of Fundamental Rights of the European Union (CFREU) was adopted by the Nice Intergovernmental Conference and solemnly proclaimed by the European Parliament, the Commission and the Council on 7 December 2000 (OJ C 384 of 18 December 2000). It was initially of a political, non-binding nature.

On 12 December 2007, the CFREU was solemnly proclaimed for the second time in Strasbourg (OJ C 303 of 14 December 2007). Since 1 December 2009, the date of entry into force of the Treaty

of Lisbon, it has been binding since, as stated in Article 6(1) TEU, it has ‘the same legal value as the Treaties’.

The CFREU is a novel text, both in comparison with the catalogues of the constitutions of the Member States and with other international instruments for the protection of human rights. It is so from the point of view of its content, since, alongside traditional rights and freedoms, it includes some recently developed rights such as the rights to cultural, religious and linguistic diversity, equality between men and women, the integration of disabled people or the rights of the elderly, access to documents, data protection and good administration. Another innovative aspect of the Charter is the inclusion of disability, age and sexual orientation as prohibited grounds of discrimination.

The EU Fundamental Rights Agency (FRA) compares the Charter's catalogue of rights and freedoms with the catalogues of the ECHR and the constitutions of the Member States. In doing so, it notes:

“The Charter increases the visibility of rights. It explicitly spells out rights and principles that are often not explicitly set out in other international human rights documents, such as the European Convention on Human Rights (ECHR). Unlike the Council of Europe's European Social Charter, the EU Charter does not offer the possibility of limiting oneself to only certain

provisions; Member States are bound by all of them. Given the breadth of rights explicitly covered in the Charter, the Charter can help to raise the visibility of rights at national level.

When comparing the Charter with the constitutions of the EU Member States, it is clear that in many cases the text of the Charter is often more explicit in relation to certain rights. For example, in Spain, several of the rights contained in the Charter appear not to be fully reflected in national constitutional law, such as the right to information and consultation of workers in the undertaking (Article 27), the right of access to employment services (Article 29), protection in the event of unjustified dismissal (Article 30), the prohibition of child labour and the protection of young people at work (Article 32), access to services of general economic interest (Article 36), the right to good administration (Article 41), the right of access to documents (Article 42) and the right not to be tried or convicted twice for the same offence (Article 50)"[1].

[1]FRA, The Charter of Fundamental Rights of the European Union in Spain, Luxembourg: Publications Office of the European Union, 2019. See Figures 1 (What rights are covered? Comparison between the Charter and the ECHR) and 2 (Does the Charter provide greater visibility to rights? Comparison between the Charter and national constitutions). The description of the Charter as a "young instrument" can be found in this text (and in many others published by the FRA):

It goes on to describe the Charter as ‘a young instrument’.
Its structure is also novel: a short preamble is followed by six chapters, devoted respectively to rights relating to dignity ( Arts. 1-5), freedoms (Arts. 6-19), equality (Arts. 20-26), solidarity (Arts. 27-38), citizenship (Arts. 39-46) and justice (Arts. 47-50). The Charter closes with the important chapter General Provisions ( Arts. 51-54).
Beneath this novel appearance, however, lies a classical conception of human rights. At their core is the dignity of the human person. For the Charter, this is the basis of fundamental human rights. If they exist, if the EU institutions must recognise and protect them, it is precisely because they are rooted in human dignity (Art. 1: “Human dignity is inviolable. It must be respected and protected”).
The Charter does not innovate in introducing this idea; rather, it refers back to a postulate first expressed in the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (preamble). And even earlier, the Charter of the

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https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-eu-charter-in-spain_es.pdf. Accessed on 12.07.2025.

United Nations (1945), whose preamble reaffirms 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and in the equal dignity and worth of the human person' (preamble).".

The Explanations on the Charter prepared by the Praesidium of the Convention[2] point out that it follows from placing human dignity at the basis of the Charter that, "In particular, none of the rights enshrined in this Charter may be used to undermine the dignity of other persons, and the dignity of the human person is an essential part of the rights enshrined in this Charter. Therefore, it may not be violated, even in the case of a limitation of a right".

The structure of the UDHR responded to the idea that dignity must be realised in all aspects of life. For this reason, the Declaration considers the individual in four different facets, seeking to recognise the rights and freedoms necessary for the individual to be able to develop his or her personality in all of them. Firstly, the Declaration views the individual as a person, and to this end recognises the rights to life, liberty, security and equality before the law (Arts. 3-11). Secondly, the Declaration establishes certain rights that correspond to the individual in his

[2] Explanations relating to the Charter of Fundamental Rights (2007/C 303/ 02), Official Journal of the European Union C-202/17, 14 Dec. 2007.

or her relations with the social groups of which he or she is a member: the right to privacy of family life and to marry; freedom of movement within the State of which he or she is a national and abroad; the right to a nationality; the right to private property; freedom of religion (Arts. 12-17). Thirdly, the Declaration contains a series of rights intended to enable the individual to contribute to the formation of the organs of the State and to participate in their activities (freedom of thought and assembly; the right to vote and to be elected; the right to have access to government and to the administration of public affairs) (Arts. 18-22). Finally, articles 23 to 27 of the Declaration include a series of rights to be exercised in the economic and social sphere (right to work, to a fair redistribution of income, to rest, to health care). In R. Cassin's graphic image, the Declaration can be compared to the portico of a Greek temple, with each of the four groups of rights mentioned constituting a pillar of the temple. These pillars support a pediment - the preamble - which affirms the unity of the human family, and are united at their base by the general principles of liberty, equality, non-discrimination and fraternity proclaimed in articles 1 and 2 of the Declaration (Cassin, 1951).

As has been explained above, the Charter alters this order. Or the also classical division between civil and political rights, economic, social and cultural rights and solidarity or third-

generation rights.
Instead, it establishes the following relationship: dignity - liberty - equality - solidarity, including new rights. Similarly, the Charter gives autonomy to the rights to judicial protection and guarantees of due process, as well as the right to the presumption of innocence (traditionally included among civil and political rights), which it groups together under the heading of Justice. The Citizenship chapter responds to a different logic, as it groups together the rights that are specific to European citizenship (Art. 20 TFEU).
It is not only its content and organisation that are new. So was the procedure followed for their elaboration. The agreement of the Cologne European Council (3-4 June 1999) to establish a Charter of Fundamental Rights was accompanied by the decision to set up an ad hoc body to draw up the draft Charter. The composition of this body - the Convention - was agreed by the Tampere European Council (15-16 October 1999), and was as follows: 62 members divided into four groups: 15 representatives of the Heads of State or Government of the Member States, 1 representative of the Commission, 16 members of the European Parliament, 30 members of national parliaments. The following participated as Observers (4): 2 representatives of the Court of Justice of the European Communities, 2 representatives of the

Council of Europe, including one representative of the European Court of Human Rights. To further the work of the Convention, a Praesidium was set up, consisting of the Chairman and Vice-Chairmen of the Convention, 2 representatives of the Members of the European Parliament, the 2 representatives of the Commission, 2 representatives of the national parliaments and the representatives of the Spanish, Danish and Greek governments (the States holding the Presidency of the European Union).

**On the legal nature of the Charter and the difficulties of its implementation by the Member States of the European Union**

However, the unique element of the Charter is its legal status. The Charter is not an international human rights treaty; on the contrary, the Charter is primary EU law. It is addressed to the institutions of the Union and to the Member States (only) when they are implementing European Union law (Art. 51). As primary law, the Charter is the catalogue of fundamental rights of the European Union. This is already recognised in EU texts.

It has been difficult for Spain (for Member States in general) to perceive this nature of the Charter. Certainly, there has been a tendency to see the Charter as a treaty for the protection of human rights.

**The Melloni case**

A clear example of the confusion generated by the nature of the Charter can be found in the jurisprudence of the Constitutional Court on the European Arrest Warrant (EAW or Euro-order). Since 2004, when the Constitutional Court passed its first ruling on a European arrest warrant (ATC 320/2004), it has applied its doctrine on extradition to this institution.

The TC considers that, like extradition, the EUEO is first and foremost a procedure on criminal proceedings previously initiated or already concluded, the purpose of which is to verify compliance with certain legally established requirements and guarantees in order to agree on the surrender of the person concerned (STC 30/2006). Its role as a control body in terms of the constitutional guarantees of the judge of the European arrest warrant must be limited to reviewing, in accordance with an external and negative control, whether or not the procedure prior to the judicial decision authorising or declaring the surrender inadmissible, or with the decision itself, has infringed any constitutionally protected fundamental right, particularly one of the rights set out in Article 24 EC. This transfer of its doctrine on extradition to matters relating to the European arrest warrant has led to a progressive distancing between the TC's doctrine and the nature of the EAW.

On occasions - in particular, STC 199/2009 -, the decisions of the TC were accompanied by separate opinions advocating that the Court should make use of the mechanisms that the EUD places at the disposal of national judges applying EU law in order to harmonise their decisions with EU law. There are basically two such mechanisms: to interpret the national law transposing EU law in accordance with the latter and to refer a question to the Court of Justice for a preliminary ruling.

It was when the Constitutional Court received a new application for protection referring to a question identical to that which was at the origin of STC 199/2009 that the TC referred its first question to the Court of Justice of the EU for a preliminary ruling (ATC 86/2011).

The TC asks the Court of Justice (CJ) to interpret Article 4a(1) of Framework Decision 2002/584/JHA and to consider the validity of this article in the light of the Charter of Fundamental Rights of the Union, in the wording given to it by Framework Decision 2007/299/JHA.

Finally, the Order asks whether Article 53 CFREU can be interpreted in a way that reconciles the content of the rights of defence as understood in the Framework Decision with that resulting from the doctrine of the TC, which grants the individual greater protection.

For the purposes of the present discussion, this last question is very interesting. It refers, as already mentioned, to Article 53 (Level of protection), according to which: ‘Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or the Member States are party, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions’.

How should this article and its application to the case be interpreted? Because it is clear that under Spanish law the right to effective judicial protection would be violated in the case of the surrender of a person who has been tried in absentia. In cases of extradition, in order to proceed with this surrender, a new trial was required to be held in the requesting country in the presence of the person concerned. The Framework Decision would allow surrender without any conditions. Spanish law, in short, offers greater guarantees in terms of fundamental rights.

How should Article 53 CFREU be interpreted? As a minimum standard of protection clause - present in international treaties - which would allow the most guaranteeing regime to be applied,

which would mean in this case displacing the protection of fundamental rights offered by the EU in favour of the constitutional protection of Spanish law, (FJ 7, points a) and c)] or as a clause whose purpose is to delimit the scope of application of the Charter, in such a way that the EU's own protection of fundamental rights is imposed, even if this means reducing the level of protection of the fundamental rights of individuals (FJ 7, point b)).

A dialogue took place at three successive moments between the Spanish Constitutional Court and the Court of Justice of the European Union regarding the European arrest warrant: the preliminary ruling (Providence Spanish Constitutional Court 86/2011, of 9 June), the Judgment of the CJ in response to the previous question (C-399/11, of 26 February 2013,) and finally, the Judgment of the Constitutional Court ruling on the appeal for amparo (Judgement 26/2014, of 13 February).

**Difficulties in the Member States in implementing the Charter: the causes**

The Melloni case is a good example of the difficulties that, some years after the entry into force of the Treaty of Lisbon, the implementation of the CFREU has entailed; difficulties that, although initially studied in relation to Spain, have occurred in all

the Member States of the European Union.

Although the original situations varied and did not always focus on the protection of fundamental rights, several constitutional courts around 2015 expressed their opposition to certain positions of the CJ.

The Federal Constitutional Court of Germany, for example, in a judgment of 15 December 2015, in a case similar to the Melloni case, stated that respect for dignity is a constitutive principle of the German constitutional identity and that this identity must also be protected against supranational powers. This reticent stance towards the ECJ's doctrine can also be seen in the Italian Constitutional Court, as the Taricco saga shows [Taricco and others, C-105/14, Judgement CJ of 8 September 2015; Providence 24/2017 of the Italian Constitutional Court of 10 April (preliminary ruling) - CJ Judgment M.A.S. and M.B., C-42/17, of 5 December 2017], and in the Danish Supreme Court in the Danks Industry case, on a case of age discrimination (of 6 December 2016 of the Danish Supreme Court in case 15/2014, Ajos A/S). And even before all of them, the Czech Constitutional Court, in the case concerning Slovak pensions (PL ÙS 5/12 of 31 January 2012) declared ultra vires the judgment of the CJEU, C-399/09, Marie Landtová, of 22 June 2011.

These difficulties are not minor and are due to the following

reasons:

- The system of distribution of competences between the European Union and the Member States, whose legal bases in the Treaties follow “a functionalist method that results in the definition of objectives, drawing up an open and dynamic system of competences that does not allow a priori and in the abstract to determine when the intervention of the Union is possible” (Dìez-Hochleitner, 2013). The distrust of this system has found clear expression in the German Federal Constitutional Court's ruling of 30 June 2009 on the Lisbon Treaty.
- The progressive extension of the Union's sphere of competence, especially in relation to the Area of Freedom and Security. As a result of this extension of competences, EU action covers issues directly related to the hard core of state sovereignty, for example, the regulation of the status of foreigners and the conditions for their entry into and exit from the territories of the Member States, or various aspects related to the ius puniendi of the state.
- The fact that these matters directly affect the fundamental rights of individuals; rights that are guaranteed by the constitutional or basic texts of the two legal systems in which the activity of the national judge acting as a Community judge takes place (CFREU/catalogue of fundamental rights of the corresponding national constitution).

Consequently, when a national court is hearing a case, it may find incompatibilities between the Community rules it is called upon to apply, on the one hand, and the fundamental rights enshrined in the CFREU, on the other. But also between Community law and the fundamental rights enshrined in the Constitution of the Member State of which he is a national.

This was undoubtedly the case in practice in the Member States, so that from 2013 onwards these cases were coming before the Court of Justice for preliminary rulings. During the years 2013-2014, it delivered 4 judgments relating to the application of the CFREU:

- Judgment (Grand Chamber) Association de médiation sociale v Union locale des syndicats CGT and Others, Case C-176/12. C-176/12, 15 January 2014;
- Judgment (Second Chamber) M.G. and N.R. v Staatssecretaris van Veiligheid en Justitie, asto. C-383/13 PPU of 10 September 2013;
- Judgment (Grand Chamber), Melloni, C-399/11 of 26 February 2013;
- Judgment (Grand Chamber), Akerberg Fransson, C-617/10 of 26 February 2013.

**The CJ's doctrine on the Charter**

The doctrine of the CJEU on the CFREU can be summarised as follows:

FIRST: The definition and protection of fundamental rights is an argument for preserving the identity of the legal system in which the judge operates.

In other words, in the same way that there are differences between national fundamental rights protection systems - each one linked to its own values related to the social, cultural and historical context of the legal system that recognises them - and that it is not easy to automatically transfer rights from one context to another, in the same way the EU fundamental rights system has certain specificities that respond to the singularities of the EUD without it being possible to transfer the rights recognised in state systems to the EUD.

The CJ is not referring to anything else when, in judgments adopted in the same period, it states that ‘the effectiveness of Directive 2008/15 must not be undermined’ (M.G. and N.R.), ‘empty the application of a fundamental principle of EU law or a provision of EU law of its substance’ (Association de médiation sociale), undermine ‘the principles of mutual trust and recognition and the effectiveness of the Framework Decision’ (Melloni) and when it recalls the obligation of the national court

to ensure the full effectiveness of the rules of EU law (Akerberg Fransson).

SECOND: This leads to determining the scope of application of the Charter of Fundamental Rights.

Article 51(1) regulates this issue, distinguishing between personal and material scope. Thus the institutions, bodies, offices and agencies of the Union are obliged to respect the rights enshrined in the Charter in all their actions. The Member States (which are the other addressees of the Charter) 'only when they are implementing Union law'. The Akerberg Fransson judgment, on the basis of settled case law of the Court confirmed by the explanations relating to Art. 51 of the Charter, defines the scope of application of the fundamental rights of the Union: 'they must be applied in all situations governed by Union law, but not outside them' (para. 19).

THIRD: The criterion used by the CJ to determine whether or not a particular legal situation falls within the scope of application of the TEU and, therefore, whether or not the Charter is applicable in the main proceedings, is the Community nature of the legislation at issue in the main proceedings.

This is the case where the main dispute concerns the direct application of the treaties, of Union legislation (M.G. and N.R., para. 29) or of internal rules implementing a directive or

framework decision (Association de médiation sociale, para. 43), whether or not the latter has actually been adopted (Melloni, paras. 36-38) (Akerberg Fransson, paras. 24-28).

However, it is possible that the Community legislation at issue in the main proceedings does not entirely determine the action of the Member States, that is to say, that they enjoy a certain margin of discretion in applying the Community legislation or in adopting the corresponding implementing legislation. Of the four judgments under consideration, the Court held that Community legislation gave the Member States such a margin of discretion in only one case: Akerberg Fransson. In such a case, as the Court pointed out, citing the Melloni judgment (paragraph 60), 'the national authorities and courts remain entitled to apply national standards for the protection of fundamental rights'.

In any case, the recognition of this margin of appreciation of the Member States does not imply that we are outside the scope of application of the TEU, and therefore of the Charter. From which the Court draws a twofold consequence:

- the application of national standards of protection of fundamental rights cannot affect the level of protection provided by the Charter, as interpreted by the Court of Justice, or the primacy, unity and effectiveness of Union law (Akerberg Fransson, para. 29);

- therefore, “where national courts are called upon to interpret the provisions of the Charter, they have the possibility and, where appropriate, the obligation to make a reference for a preliminary ruling to the Court of Justice under Article 267 TFEU” (Akerberg Fransson, paragraph 30).

FOURTH: Thus, the national judge acting as a Community judge must examine whether the rules applicable to the case leave room for the States to act.

If this is not the case, the standard of protection of fundamental rights to be taken into account is the Charter itself; on the other hand, if the norm offers a margin of appreciation to the Member States, the national standards of protection can visibly play a role in the task of protecting fundamental rights before the national public authority that applies EU law (albeit with the limit that they cannot condition either the level of protection of the Charter - in the light of the interpretation given by the CJ - or the primacy, unity and effectiveness of Union law).

**Concluding remarks**

If, as the European Commission stated when presenting its priorities for the period 2019-2024, ‘fundamental rights are part of our European way of life’, great credit must be given to the Court of Justice that this is so. From very early on, the Court has

built up a doctrine of protection of fundamental rights in the Union. And it has done so without any starting point, since the Community did not originally have either a legal text declaring fundamental rights or a court to guarantee them. The CJ is certainly not a human rights court but a court whose mission is to ensure ‘respect for the law in the interpretation and application’ of the Treaties. It soon realised, however, that in order to achieve this, its main objective, it had to protect the rights and freedoms of the addressees.

There are elements of continuity in this doctrine, the most relevant being the understanding that the fundamental rights of the European Union, like the fundamental rights of the different Member States, are based on their own foundations, which do not coincide in all their elements. There are social, political and legal conditioning factors in the constitutional systems of the Member States which justify differences between many elements of their systems and, of course, also in the catalogue of rights and freedoms recognised by their constitutions, or in their limits or guarantees. Although the constitutional declarations of rights and freedoms of the European states are very similar, they are neither identical nor transplantable from one system to another.

Like national laws, European Union law is the result of certain specific elements (basic economic freedoms, the competition

regime, principles of primacy and direct effect, etc.) which are reflected in the EU's catalogue of fundamental rights and which condition the interpretation and application of those rights. The Court considers that only on the basis of these parameters (recognition of the structure and objectives of the Union) should fundamental rights be protected in the EU.

However, this protection only applies within the scope of application of the EUD. Although conceptually the CJ's construction is understandable (distribution of jurisdiction), it is not easy for national judges applying the EUD to determine whether a particular case falls within the scope of EU law or national law. This is the most controversial point of the ECJ's doctrine on EU fundamental rights at present.

As has been discussed, the ECJ has been receptive to these difficulties of domestic courts - no doubt because in the case of constitutional courts these difficulties have been a worrying factor in distancing itself from the ECJ - to the point of exercising an almost tutorial role on the ‘application of the EUD’.

And now comes a final interesting development. The German Federal Constitutional Court in its judgments of 6 November 2019 in the cases Right to be Forgotten I and Right to be Forgotten II (Recht auf Vergessen I, 1 BvR 16/13, and Recht auf

Vergessen II, 1 BvR 276/17) has reversed its traditional position on the protection of fundamental rights by the EU, expressed in the judgment known as Solange II, according to which each court, European and national, is exclusively responsible for the effectiveness and guarantee of its respective legal system, including fundamental rights. The CFA partially abandons this position by deciding that in cases similar to the Melloni case, i.e. when the legislation in question falls fully within the scope of application of the EU and leaves no room for action by the State, the CFA itself will directly apply the Charter. Given by the First Chamber of the CFC, this judgment has been endorsed by the European Arrest Warrant III judgment of the Second Chamber of 1 December 2020.

Difficulties therefore persist. This is illustrated by the interesting dispute between the Austrian Data Protection Authority (Österreichische Datenschutzbehörde) and W.K., concerning the scope of application of the General Data Protection Regulation (GDPR). WK had acted as a witness before a Committee of Inquiry set up in Parliament to clarify the existence of possible political influence on the Bundesamt für Verfassungsschutz und Terrorismusbekämpfung (Federal Agency for Constitutional Protection and Combating Terrorism, Austria; hereinafter “BVT”). The Commission was open to the media. Despite a

request for anonymisation made by WK, the minutes of that hearing, in which his full name and surname were given, were published on the website of the Austrian Parliament (Parlament Österreich), which led W.K. to lodge a complaint against an alleged infringement of his right to protection of his personal data.

The complaint was rejected by the Data Protection Authority. Subsequently, the Federal Administrative Court (Bundesverwaltungsgerichtshof) upheld WK's reasoning and annulled the decision of the Data Protection Authority. An appeal against that judgment was lodged with the Supreme Administrative Court (Verwaltungsgerichtshof), which referred a question to the CJ for a preliminary ruling, essentially asking whether the acts of a committee of enquiry set up by the Parliament of a Member State are excluded, irrespective of the subject-matter of the enquiry, from the scope of the under Article 2(2)(a) of the GDPR and the first sentence of Article 16(2) TFEU on the ground that the work of such a committee is, by its nature, an activity which does not fall within the scope of EU law?

Case C-33/22 [Österreichische Datenschutzbehörde v. W.K.] has given rise to the recent judgment of the CJ (Grand Chamber) of 16 January 2024.

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# A Roadmap for the EU Agency for Fundamental Rights: facing contemporary challenges

Doi: 10.5281/zenodo.16422194

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## Introduction

The European Union (EU) is experiencing an impasse that requires creativity and ingenuity to face contemporary challenges (Balteanu, 2023; Nitoiu, 2024). To avoid falling into disrepute, the EU needs to review its structure, decision-making procedures, financing, fiscal harmonisation and other elements (Cristea, 2021). It must also ensure that it preserves the values set out in Article 2 of the Treaty on the European Union (TEU),[1] and

[1]The European Council's Strategic Agenda 2024-2029 includes among the EU's priorities and strategic orientations the strengthening of values such as respect for human dignity, democracy, equality and the rule of law and

the general principles stemming from the common constitutional traditions set out in Article 6 of the TEU (Carmona, 2016). Fundamental rights have gone from being considered peripheral to being central issues in the internal and external public policies of the EU and the Member States (Toggenburg, 2014). However, in the plans and agreements implemented by the EU institutions, the structural framework for fundamental rights is being weakened (Gamarra, 2025).

Despite the prominence of fundamental rights on the agendas of EU institutions and in the public policies of Member States, there is no consensus on how to address the contemporary challenges and their impact on fundamental rights. Some Member States seek to strengthen and control more rigorously the values and principles that underpin the European integration project, as well as its policies, particularly when they affect fundamental rights and the rule of law, and thus liberal democratic systems (Urbaneja, 2023). Others, however, are reticent and sceptical

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respect for human rights, including those of persons belonging to minorities. The document is available in https://www.consilium.europa.eu/en/policies/strategic-agenda-2024-2029/. Accessed on 12.07.2025. Also, in the European Commission's political guidelines remains the language of values. The guidelines are availables in https://commission.europa.eu/priorities-2024-2029/democracy-and-our-values_en .Accessed on 12.07.2025.

about implementing fundamental rights and challenge the rule of law and democracy (illiberal systems) (Marks, 2003; Barrio López, 2022).

The multiple worldviews experienced by the EU are projected onto its institutions, bodies and agencies, including the EU Agency for Fundamental Rights (the FRA or the Agency), which is currently immersed in the implementation of its new mandate (Gamarra, 2022).[2] The FRA is one of the most persevering and consistent decentralised agencies of the Area of Freedom, Security and Justice (AFSJ) (Pi Llorens, 2017) in the promotion and protection of fundamental rights, offering reliable data and research (Margaritis, 2019).

Over the years, it has built up a body of practice that makes it a

[2] Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 108 of 7 April 2022) was adopted in accordance with Article 308 of the Treaty establishing the European Community, unanimously by the Council, on a proposal from the European Commission and after consulting the European Parliament. Council Regulation (EU) No 2022/555 of 5 April 2022 amending Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 108 of 7 April 2022) was adopted in accordance with Article 352 of the Treaty on the Functioning of the EU, by unanimity of the Council, acting on a proposal from the Commission and after obtaining the consent of the European Parliament by means of a special legislative procedure.

benchmark for collecting, recording and analysing data on various areas of fundamental rights in the EU (Toggenburg, 2018), in particular in those areas where it has extensive experience: racism, xenophobia, equality and non-discrimination, personal data protection, disability rights, anti-Semitism, anti-racism, violence against women, or migrants' rights and border management. The large volume of reports, opinions, conclusions and opinions published are sufficient evidence to defend its effectiveness.[3] In fact, the FRA has managed to fulfil the purpose for which it was created (Pi Llorens, 2007) without considering the optimal use of the resources used (Wouters and Ovádek, 2019).[4]

It was created to promote fundamental rights with the function of assisting and expertise EU institutions and Member States when implementing EU law through the collection and analysis of data

[3]In the external audit carried out in 2017, the parties consulted did not question the quality of the results of the FRA's investigations. While the results of the external evaluation on legal opinions prepared at the request of the EU institutions, in particular the European Parliament, were less conclusive. Optimity Advisors (2017). *Final Report. 2nd independent External Evaluation of the European Union Agency for Fundamental Rights*. Berlin/London/Brussels, 141-144.

[4]This is in line with the external audit reports on the activities of the FRA and the Annual Reports on the agencies of the European Court of Auditors.

in order to define EU policy in this area (Sokhi-Bulley, 2011). The context in which it was conceived is undergoing changes (Izquierdo & Martínez Capdevila & Nogueira-Guastavino, 2021) that require ingenious efforts to avoid falling into irrelevance.

Some authors have put forward different scenarios that can help to strengthen it (Morijn & Toggenburg, 2024). The first involves developing the practice on the basis of the current mandate (status quo plus); the second involves revising its mandate (FRA plus), i.e. modifying those elements that need to be strengthened; and the third involves transforming the FRA into a fully-fledged fundamental rights authority.[5]

In the current status quo plus scenario, the paper proposes that the FRA should have one or more clear roadmaps and guidelines to meet the future challenges in order to remain the EU's fundamental rights Agency of reference.[6] The roadmap, taking effectiveness and efficiency as a starting point, sets an objective (an end of importance for strengthening and continuity), and on

[5]As requested by LIBE, see Draft Opinion of the Committee on Civil Liberties, Justice and Home Affairs for the Committee on Constitutional Affairs. Proposals of the European Parliament for the amendment of the Treaties. Doc. 2022/2051 (INL) 15 November 2022, para. 9.

[6]Geopolitical, economic, social and environmental changes require the FRA to be prepared to face future challenges. For this reason, the FRA is immersed in a process of reflection on the immediate future.

the way to achieving it we have to ensure the targets that will lead to the achievement of the objective.[7]

For there to be an objective as such, or at least an attribute or description of what we are aiming for, indicators of the level achieved and a time frame must be identified, and who is to execute it must be defined. The aim is to make visible the roadmap (overall strategy) that the FRA needs to strengthen itself in turbulent times.

**Vision, Objective and Tasks**

A roadmap and the different ways to achieve it have to be clearly defined by the director and unit heads of the FRA and discussed by the rest of the staff. Hence, strategic benchmarks such as vision, mission and objectives have to be perfectly supported by tactics including action plans, corresponding resources and dynamic benchmarks placed on the basis of results. It must always be kept in mind that any activity undertaken must be improved and thus measurable.

[7]An action plan or roadmap includes the detailed sequences that make up the strategy. Through its use we achieve goals. A roadmap would not only guide tactical action, but also facilitate a coordinated and effective response to emerging situations.

The FRA works to raise visibility and awareness of fundamental rights in the EU and in the Member States by referring to the Charter of Fundamental Rights of the EU (the Charter) (Toggenburg, 2013; Peers, Hervey, Kenner, and Ward, 2014) and the other instruments that make up international human rights law (Sáiz Arnaiz, 2001). The Charter is a modern instrument that establishes the different categories of fundamental rights that inform Union law by combining civil and political rights and social, economic and cultural rights (Ripol and Ugartemendía, 2022; Fernández Arribas, 2024). The FRA promotes (develops) the principles and rights enshrined in the Charter through different instruments such as reports, conclusions or opinions. It seeks to promote the defence of human rights and to educate people about their value.

The first task is to provide assistance and expertise to the institutions and the Member States when implementing Union law in order to help them to respect fundamental rights when adopting measures, action plans or establishing courses of action in their respective spheres of competence.[8] The Agency's independent assistance and expertise is useful to the institutions

[8]This is stated in Article 2 of Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Council Regulation (EU) No 2022/555 of 5 April 2022.

and Member States in developing sound methodologies for recording and collecting comparable and objective data in areas such as non-discrimination, racism, xenophobia and other forms of intolerance, violence against women, among others.

To achieve this aim, the FRA conducts quality surveys and research, provides technical assistance, training and capacity building, and has networks to disseminate information and raise awareness in the field of fundamental rights (De Schutter, 2020). These functions are implemented either individually, including by contracting expert assistance, or through cooperation agreements with other EU agencies, international organisations, in particular the Council of Europe, non-governmental organisations and civil society actors involved in the promotion of fundamental rights.[9]

It possesses a strong investigative capacity in the area of fundamental rights. It collects, records, analyses and disseminates relevant, objective, reliable and verifiable data and information, including the results of research and monitoring activities communicated to it by Member States, Union institutions, as well as EU bodies, offices and agencies, research centres, non-governmental organisations, and other international

[9]See EU Agency for Fundamental Rights (2021). *Protecting Civic Space in the EU*. Luxemburg: Publications Office.

organisations, in particular the Council of Europe.[10]

Thus, on a day-to-day basis, it develops or promotes surveys, research and scientific work, preparatory and feasibility studies and analyses data on the situation of fundamental rights in the 27 EU Member States,[11] and also in the Candidate States. The Agency provides EU institutions and Member State bodies with reliable and verifiable information and data on the state of fundamental rights in order to support them in developing evidence-based initiatives.[12]

The second task is reporting. In fact, research and scientific work is formally channelled through reports, conclusions and rulings on specific issues for the Union institutions and the Member States in implementing Union law.[13] Since 2008, the FRA has

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[10]Article 4 (1) (a) of Council Regulation (EC) No 168/2007 of 15 February 2007 as amended by Regulation (EU) No 2022/555.

[11]Article 4(1) (c) of Council Regulation (EC) No 168/2007 of 15 February 2007 as amended by Regulation (EU) No 2022/555.

[12]To achieve this, the FRA develops methods and procedures to improve the comparability, objectivity and reliability of data at European level, in cooperation with the Commission and the Member States to help them develop evidence-based public policies in the area of fundamental rights.

[13]FRA issues conclusions and opinions pursuant to Article 4(1) (d) of Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Regulation (EU) No 2022/555, on specific issues for the Union institutions

been issuing legal opinions on the Commission's legislative proposals, mainly at the request of the European Parliament.[14] It also publishes a variety of reports: on fundamental rights issues within the FRA's areas of activity,[15] thematic reports based on their analysis,[16] and research and surveys.[17]

The most significant research outcome is the Annual Fundamental Rights Report (Annual Report). The Annual Report aims to provide a modern, innovative, creative, and relevant analysis of fundamental rights issues in the EU and its Member States in the year preceding its publication. It covers the FRA's

and the Member States when implementing Union law.

[14]For example, the European Parliament's request to the FRA for the collection of data on LGBT discrimination in the 27 EU Member States. Although such requests from the European Parliament have decreased in recent years. For further information see: https://rm.coe.int/1680695c00 Accessed on 12.07.2025.

[15]The different reports can be found at https://fra.europa.eu/en/products/search .Accessed on 12.07.2025.

[16]FRA Activity Report (Fundamental Rights Report), available at https://fra.europa.eu/es/about-fra/what-we-do/annual-activity-programme Accessed on 12.07.2025.

[17]The surveys on violence against women or minorities and discrimination are the most relevant. Work is currently underway to collect testimonies and data from Ukrainian refugees and a second survey on violence against women.

areas of activity and also includes examples of good practices, in accordance with Article 4 (1) e) of the Founding Regulation.[18] The third task promotes communication strategies and dialogue with civil society in order to raise public awareness of fundamental rights,[19] as well as a policy of disseminating and informing about its work.[20] In order to share the experience developed through its research, the FRA engages with external stakeholders in advocacy, capacity building and technical assistance activities, for example by organising training modules on the Charter, supporting critical issues such as training of border guards on the protection of the rights of migrants or asylum seekers, children's rights, or participating in Schengen

[18]The latest Annual Report published by the FRA corresponds to 2024, see *Fundamental Rights Report 2024*, FRA, 2024, available at https://fra.europa.eu/en/publication/2024/fundamental-rights-report-2024. Accessed on 12.07.2025.

[19]The creation of a communication and activities unit is clear evidence of the importance of this task. See the structure of the FRA on the website, as well as at Optimity Advisors (2017). *Final Report. 2nd independent External Evaluation of the European Union Agency for Fundamental Rights*. Berlin/London/Brussels.

[20]Established in Article 4(1) (h) of Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Council Regulation (EU) No 2022/555 of 5 April 2022.

evaluations, among others.

The most prominent recurrent activity it promotes, on a biennial basis, is the Fundamental Rights Forum,[21] which brings together key actors and experts on fundamental rights from European states and international organisations. The Agency also runs a platform of civil society organisations active in the area of fundamental rights (Fundamental Rights Platform) and cooperates with national fundamental rights institutions, equality bodies and non-governmental organisations active in the field of human rights. In recent years, the FRA has been promoting the creation of databases on the Charter, the case law of the Court of Justice of the EU, national courts and other legislation on the principles, freedoms and rights enshrined in the Charter.[22] It also promotes an annual meeting on the implementation of the Charter, the Annual EU CharterXChange, together with the European Commission.[23]

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[21]Held every two years, the Forum brings together thousands of experts in the field of human rights. It is perhaps the most important activity organised by the FRA to promote fundamental rights. In 2021, the Forum was held in a mixed format due to the evolution of the SARS-CoV-2 pandemic.

[22]Disseminating information on fundamental rights helps to raise awareness among the various actors in society. More information at https://fra.europa.eu/en/eu-charter . Accessed on 12.07.2025.

[23]See information on the 2nd Annual EU CharterXchange available at

Since 2016, it has been expanding its tasks in new ways, including the deployment of ‘operational missions’, with the consent of the State in question, to gather testimony from victims, collect data, and offer expertise or assistance.[24] This function was not foreseen in the founding Regulation, nor was it included in the new one, although it would have been a splendid opportunity to include its nature and characteristics in order to monitor and control them.

Operational missions are developed in cooperation with other decentralised bodies and agencies such as the European Institute for Gender Equality (hereinafter EIGE), European Border and Coast Guard Agency (hereinafter Frontex), EU Agency for Asylum (hereinafter EUAA), European Agency for the Operational Management of Systems (hereinafter eu-LISA), EU Agency for Police Cooperation (hereinafter Europol) and EU Agency for Criminal Justice Cooperation (Eurojust), among others, strengthening actions and coherence in the promotion of fundamental rights.

The FRA, for example, supported Frontex in the EU migration

https://fra.europa.eu/sites/default/files/fra_uploads/charterxchange_2024_takeaways.pdf . Accessed on 12.07.2025.

[24]For example, with the massive arrival of irregular migrants on the coasts of Greece and Italy, as well as in the case of the war in Ukraine, the FRA has activated this type of mission to collect testimonies from those affected.

emergency with training and capacity building activities in the 'hotspots' and regular reporting on the situation on the ground.[25] Assistance at 'critical points' of entry for irregular migrants such as those in Italy and Greece,[26] training in the application of the Schengen Borders Code to local organisations, or to immigration services and border police on the return of unaccompanied children has been one of the key issues in the work of the FRA for years.[27]

In particular, in March 2022, the FRA established a mission to learn about the effects of the war in Ukraine on fundamental rights in the EU. FRA sent a mission to Ukraine's border with EU states, in particular to Poland, Slovakia and Romania, to take testimonies from different victims of the war, mainly women and children, along with other groups who are particularly vulnerable, including the elderly and unaccompanied children, and to offer assistance and advice on applying for temporary

[25]As a member of the Frontex Advisory Forum, it observes joint border operations coordinated by Frontex.

[26]On the protection of migrants in an irregular situation, it is of interest to consult the ECtHR judgment of 7 July 2022, Safi et Autres v. Greece, CE:ECHR:2022:0707JUD000541815.

[27]At present, the FRA has decided to stay away from the long-planned project in this regard. The Director's report to the Board of Directors at the meeting of 16 September 2022 contains information on this measure.

protection in the EU.[28] In this task, the EIGE, the Group of Experts on Combating Violence against Women and Domestic Violence (GREVIO) or Eurojust, among others, are supporting the FRA in the collection of data and testimonies.

The Agency's mission has been extended to the area of police and judicial cooperation in criminal matters with implications for its areas of activity and its annual and multi-annual work programme. It is entering a new and important phase with work and data collection in the aforementioned area of police and judicial cooperation in criminal matters, including aspects related to fundamental rights in the framework of mutual recognition of judgments and judicial decisions or the use of force by law enforcement agencies, among others, in addition to the thematic areas in which it has a proven track record.

The FRA takes on more areas in which to develop its tasks with increasingly scarce human and financial resources. It fulfils its mission independently (not autonomously as it is dependent on the European Commission) and in a way that reflects the professional conduct and values expected of an EU Agency. It should have the vision (insight) to detect the issues of most

[28]Council Implementing Decision (EU) No 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and with the effect of initiating temporary protection (OJ L 71 of 4 March 2022).

concern to European citizens through forward-looking techniques in order to provide useful data that allow us to anticipate the future from the present.

**Annual and Multi-Annual Work Programme**

The FRA needs to have a clear and coherent roadmap(s) (action plans) to materialise its activities. In a changing political, economic, social and environmental marked by risks, having a roadmap (or several) would allow it to align its priorities and resources with emerging fundamental rights challenges.

The FRA develops its tasks on the basis of a five-year institutional strategic plan (2023-2028)[29] which is vague and

[29]A strategy includes a series of organized actions through which an objective is achieved. These actions are captured in the Strategic Plan. When formulating the strategy, we must be very clear about the launching platform: Who we are? What do we propose? How many activities do we have? What limitations exist? What commitments do we make? To whom are we addressing ourselves? These answers and others create the framework for what we will call the Institutional Strategy, from which, always based on the characteristics of our organization, we will guide activities, control, objectives, and results. While the Institutional Strategy is common to the entire organization, the Operational Strategy must be adapted to the characteristics of the activity and goals. In accordance with this conception of strategy, we chose to call the Strategic Plan 2023-2028 as

lacks allocations, references, goals and objectives, and annual and multi-annual work programmes. The reference framework for the development of its activities is the Charter[30] and international instruments for the protection of human rights, in particular those promoted by the Council of Europe.

The institutional strategic plan 2023-2028 consists of three main sections. The first analyses the renewed mandate of the FRA and its vision for the future. It is built on the 2018-2022 vision, placing it as the recognized and independent body for the promotion of the human rights in the EU.

The second addresses the functional and thematic dimensions of the strategy. The thematic dimension identifies fundamental rights megatrends and development scenarios aligned with EU priorities. The functional dimension links the FRA's mandate with fundamental rights priorities in the new programming period. The strategic plan sets out the Agency's priority areas of focus in relationship with future challenges and implications for fundamental rights such as: i) changes in justice research, ii) threats to democratic values, iii) inequality and discrimination,

a Institutional Strategic Plan. See *Strategic Plan 2023-2028*, FRA, 2023, available at https://fra.europa.eu/en/publication/2023/strategic-plan-2023-2028.Accessed on 12.07.2025.

[30]Article 5(2) (b) of Council Regulation (EC) No 168/2007 of 15 February 2007 as amended by Regulation (EU) No 2022/555.

iv) changing migration patterns, v) economic and social trends, vi) digital transformation and Artificial Intelligence, and vii) climate change. This prioritisation is relevant in an environment of increasingly scarce resources, where the proportionality between effectiveness and efficiency is of utmost importance.

A third consists of three strategic goals, supported by ten targets. The goals are: i) supporting the upholding of fundamental rights standards in the development of new EU laws and policies (with three targets); ii) contributing to ensuring the respect, protection, and fulfilment of fundamental rights in the areas covered by existing EU laws and policies (with three targets), and iii) engaging in cross-cutting actions to support the realization of the EU's fundamental rights goals and vision (with four targets).[31]

The annual and multi-annual work programme was amended in Council Regulation (EU) No 2022/555 in order to avoid its limited scope for action and narrow focus on specific areas. The Regulation stipulates that each year, the Director shall prepare a draft programming document containing the annual and multi-annual work programmes, in accordance with Article 32 of Commission Delegated Regulation (EU) No 2019/715.[32]

[31]It should be remembered that in the Strategic Plan 2018-2022 included five priorities.

[32]Commission Delegated Regulation (EU) No 2019/715 of 18 December 2018 on the framework Financial Regulation for the bodies set up under the

The Director is responsible for submitting the draft programming document to the Management Board and, once endorsed by this, submits it to the European Parliament, the Council and the Commission by 31 January of each year at the latest.[33] In the Council, the Working Party on Fundamental Rights, Citizens' Rights and the Free Movement of Persons (FREMP) holds a discussion on the draft work programme to which the FRA Director may be invited to present the guiding ideas.[34] In parallel, the programming document is introduced to the National Focal Points and the Scientific Committee for feedback on the project.[35] Once the views and opinions of the various stakeholders have been received, the director is responsible for submitting the draft document to the Governing Board for approval[36]. The aim is to create a feedback of ideas that will ultimately enrich and refine

Treaty on the Functioning of the EU and the Euratom Treaty and referred to in Article 70 of the Regulation (EU, Euratom) nº 2018/1046 of the European Parliament and of the Council. (OJ L 122, 10 May 2019, p. 1), p. 1).

[33]Article 5a (2) of Council Regulation (EC) No 168/2007 of 15 February 2007 as amended by Regulation (EU) No 2022/555.

[34]Ibid.

[35]Article 5a (3) of Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Regulation (EU) No 2022/555.

[36]Article 5a (4) of Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Regulation (EU) No 2022/555.

the FRA programming document.

To ensure the relevance of opinions and expertise and the timing of delivery, in line with users' needs, the FRA consults widely with its stakeholders at the time of the preparation of its multi-annual programming document. In particular, it will seek input from civil society organisations through various platforms, as well as from national focal points acting as contact points in national administrations,[37] and from its Board of Directors.

This singular methodology (Me, 2019) will allow the Agency to have a broader scope of work by covering new areas of EU law, including secondary legislation. The European Parliament endorsed this new working methodology and urged the European Commission to further deepen the independence and efficiency.[38]

The multi-annual programme offers the opportunity to expand the thematic areas of work. This does not mean that the FRA will

[37]In the case of Spain, the focal point is the Spanish Observatory on Racism and Xenophobia (Oberaxe). More information on this Observatory is available in: https://www.inclusion.gob.es/oberaxe/es/index.htm. Accessed on 12.07.2025.

[38]Recommendation on the proposal for a Council regulation amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights|A9-0227/2021|European Parliament (europa.eu) available in: https://www.europarl.europa.eu/doceo/document/A-9-2021-0227_EN.html . Accessed on 12.07.2025.

stop working on key areas such as racism and xenophobia or data protection, but rather that it will continue to develop these areas.
It remains to be seen, however, whether such annual and multi-annual programmes will contribute to greater flexibility and agility in responding to contemporary challenges. Swift action is essential to address migration issues, violence against women, climate change and natural disasters, or the right to good governance, for example in the distribution of European funds.[39]
In the end, the definition of the FRA's scope of action should be based exclusively on the programming document.[40]

**Transparency**

The roadmap would strengthen the transparency, simplify the accountability, bring the Agency closer to intermediate bodies and bring it closer to the citizen. It is a priority for the EU and also for the FRA. Strengthening it will benefit both the Agency and the other EU institutions and bodies.
By setting clear and specific goals, the FRA publicly commits

[39]See *EU Funds. Ensuring Compliance with Fundamental Rights*. Report, FRA, 2023, available in https://fra.europa.eu/en/publication/2023/eu-funds .Accessed on 12.07.2025.

[40]Sixth recital of the preamble to Council Regulation (EC) No 168/2007 of 15 February 2007, as amended by Regulation (EU) No 2022/555.

itself to its goals and enables stakeholders, including EU institutions, Member States governments and stakeholders, among others, to interpret the assessment of its tasks in a clear and objective manner.[41]

The policy of transparency protects the interests of the individual while respecting the interests of the sovereign state. Knowledge of the rights of the Charter is essential for individuals to exercise them for their own good and that of democratic society itself. The growing awareness of fundamental rights and the development of increasingly refined systems is largely due to the widespread media coverage of rights violations and public pressure. Transparency measures have played a key role in this regard (Bianchi & Peters, 2013). FRA's communications

[41]Evaluations of the FRA are foreseen in Article 30 of the founding Regulation with certain modifications in the new Regulation. Article 30 of Regulation (EU) No 2022/555 specifies that the Commission shall commission the evaluation of the FRA every five years to assess, in particular, its impact, effectiveness and efficiency, as well as its working practices. The first independent external evaluation of the FRA's work was carried out in 2012, a second in 2017 and a third in December 2022. A new evaluation will be carried out by 28 April 2027 and every five years thereafter. In alternate evaluations, a stocktaking of the results achieved in relation to its objectives, mandate and functions, including the possibility of modifying the mandate and the potential financial implications of such innovation, will be carried out.

campaigns and reports help ensure that the media and civil society have verified information on contemporary issues. Providing continuous information on procedures, activities in progress or monitoring of the application of the Charter by the institutions of the Union or the Member States indicates credibility.

The promotion of democratic institutions and respect for fundamental rights is enhanced through the real and effective involvement of civil society, as well as in the implementation and enforcement at national level of the application of the Charter by judges, lawyers and staff of the central state administration and of regional and local authorities, or law enforcement agencies, as well as businesses, individuals and civil society (Böckenförde, 2000). The purpose is to achieve a more participative, transparent democracy that is close to the interest of the public. Transparency is necessary for good governance, justice, the rule of law and fairness (Bianchi & Peters, 2013).

Transparency must be followed at every stage of the work in order to be effective. It begins with informing the actors involved of the start of the process.[42]

[42]For transparency to be effective, parties must disclose documents that include motions, witness testimony or other evidence. The disclosure of documents and proceedings may change depending on the applicable rules. However, there are generally three categories of documents: documents that

Subsequently, officers should have access to the documents of the proceedings, followed by open hearings and an opportunity for third parties to intervene. At the same time there are reasons for certain proceedings or documents to be kept out of public view on grounds of confidentiality. These individual elements are not sufficient to establish transparency on their own, therefore they must be taken as a whole. Reports issued by the FRA should be signed by those responsible for their elaboration. It is assumed that the staff responsible for preparing the various reports has sufficient specialization and expertise in the subject matter of the report. In this way, each expert would be responsible for the content and methodology of the report.

If a concept is not used correctly or a reference to a report from another Agency or international organisation is erroneous or incomplete, the responsibility should fall on the expert and not on the FRA as a whole. This is due to responsibility towards the Agency itself.

Public access to the works is a relevant issue for the control of officials, among other staff, who could potentially abuse their power and position of strength. It can decide whether the process should be open or closed. Here open access conflicts with the

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are disclosed on motion of the court, documents disclosed upon request, and documents that are requested but disclosed at the discretion of the court.

confidentiality of the matters dealt with at a certain stage of the process.

If a priori one might think that transparency and confidentiality are two opposing concepts, this is not entirely true. Some scholars even argue that absolute confidentiality is impossible to achieve because actors are free to disclose information of their personal knowledge to third parties.

**Strengthening its networks**

With a roadmap, the FRA would strengthen its capacity to cooperate and collaborate with EU institutions, bodies and agencies, as well as with other national and international actors, ensuring that their efforts complement each other.

The Agency operates in a multi-networked (interconnected) environment with other EU institutions, notably the Council of Europe, Member State governments and other European international organisations (Pérez Bernárdez, 2015), among many other actors. This cooperation is crucial for the effective implementation of public policies in the field of fundamental rights in the EU, weaving a network of networks on which it relies to implement programmes, projects and strategies relating to fundamental rights (Gamarra, 2022).

Cooperation between the Council of Europe and the FRA is

embodied in the Cooperation Agreement between the European Community and the Council of Europe (the Agreement).

The objective of this agreement is to avoid duplication and ensure complementarity and added value between the FRA, the Council of Europe, and its entities, namely: the Secretariat, the Parliamentary Assembly (PACE), the European Court of Human Rights (ECHR), the Commissioner for Human Rights, the European Committee of Social Rights, the European Commission against Racism and Intolerance, the Special Representatives, intergovernmental committees and expert groups, and the Human Rights Monitoring Committees.

The Council of Europe and the FRA pursue common strategic objectives and priorities related to the promotion and protection of human rights, based on the aforementioned cooperation agreement.

Cooperation with competent EU bodies and agencies has been intensifying in recent years. Article 7 of Council Regulation 2022/555 is entitled ‘Relations with the competent bodies and agencies of the Union’. In the regulations establishing Frontex, EASO, EU-LISA, among others, cooperation with the FRA is explicitly mentioned. Thus, it establishes cooperation agreements with these agencies so that they can benefit from the experience accumulated in the areas of work and common interest in the

field of fundamental rights.

The Court of Auditors' Report on the Future of EU Agencies emphasises closer co-operation between agencies in the same field of action.[43] For example, agencies such as EIGE and the FRA are active in the field of women's rights and could add additional synergies to their existing cooperation to increase convergent results.

Similarly, within the EASO, Frontex, Europol collaborate with the FRA in critical situations such as those in Italy, Greece and with refugees coming from Ukraine. Also, in the area of the Area of Freedom, Security and Justice, regular meetings are held between the nine AFSJ agencies (Pi Llorens, 2017). So, cooperation with other EU agencies, with complementary tasks, serves to give coherence and continuity to work on issues such as violence against women, migrants, temporary protection for children, or asylum seekers, among others. However, it would be positive to centralise cooperation with the agencies of the AFSJ in a single unit to avoid inefficiencies in governance and decision-making.

The development of cooperation between the FRA and the European Economic Area Financial Mechanism (hereafter EEA)

[43]European Court of Auditors. Special Report. The Future of EU Agencies. Flexibility and cooperation can be strengthened, 2022, no. 22, 65-83.

and Norway Grant funds may be of strategic importance to fill resource gaps in the future, particularly as regards cooperation with the Member States benefiting from these funds.[44]

**Effectiveness and efficiency**

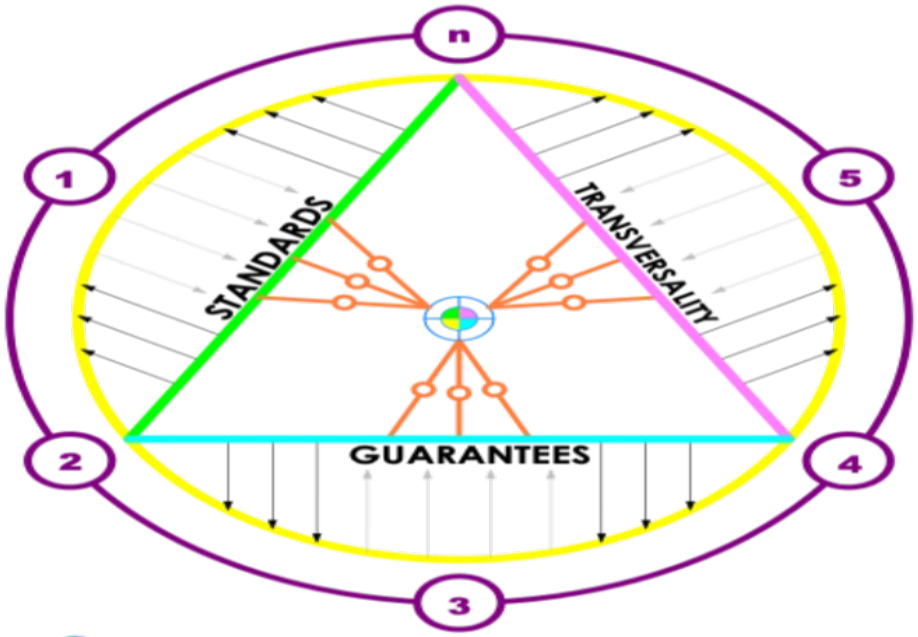
Effectiveness and efficiency are crucial and play a central to a roadmap. The FRA, like any other Agency or public body, works with limited resources, both human and financial (Wouters and Ovádek, 2019). A comprehensive and detailed action plan would allow the Agency to prioritise its activities, in line with its annual and multi-annual work programmes, ensuring that the available resources are used optimally and transparently to address the areas of focus set out in the work plans/programmes.

The efficiency of the FRA is based on the maximum optimisation of management. Achieving objectives with appropriate spending

[44]This mechanism was established by European Free Trade Association (EFTA) states participating in the European Economic Area (EEA), Iceland, Liechtenstein and Norway in order to reduce economic and social disparities within the EEA and to strengthen bilateral relations between the donor and recipient states (Greece, Romania, Czech Republic, Slovakia, among others). See Administrative Cooperation between the Financial Mechanism Office and the European Union Agency for Fundamental Rights, 15 December 2016.

requires us to consider the parameters of effectiveness and efficiency as a pairing and a geometric reference point (see Figure 1).

STRATEGIC MANAGEMENT OF THE FRA: EFFECTIVENESS-EFFICIENCY BINOMIAL




YGC May-2025
Source: Self-made

We must also strive to ensure that they are always in balance in order to achieve a solid basis of understanding that allows us to identify opportunities, quantify variables and analyse data that serve to obtain a clear perspective in order to align its objective with the usual effectiveness and maximum efficiency of its activities. It should be recalled that one of the reasons for the amendment of the founding Regulation was to 'increase the efficiency of the functioning' of the FRA.[45] It is true that we could be faced with actions that are effective in terms of the objective, but inefficient in terms of the resources used to carry out their work/commitments.

The Agency, regardless of its mission, organisational structure, funding sources, human resources and other elements, should consider how to improve efficiency in monitoring progress and identifying opportunities by setting targets derived from an efficient perspective. Particular care should be taken not to confuse goals and objectives. A goal may be to minimise costs or to issue a certain number of reports. A goal can be achieved through several objectives, these being the raison d'être for effectiveness (Gamarra, 2025).

[45]The efficiency of the FRA is mentioned three times in Council Regulation (EU) No 2022/555 of 5 April 2022. Two in the preamble, points 2 and 4, and one in the enacting terms, in Article 30 (3) of the Regulation.

**Conclusions**

Political reasons explain and support the existing room for improvement in the FRA action directed to achieve its objective. Above all, it is necessary to delimit the areas of work of the FRA in relation to those of the European Commission so as not to overlap the reports produced by the two (Toggenbourg, 2008). While there is a tendency not to clash with the work of the European Commission, it is not always easy to reconcile the interests of the two, as can be inferred from the work on violence against women, equality and non-discrimination, or artificial intelligence, for example.

Be that as it may, the FRA should detail a roadmap with the following priorities: first, determine when it can offer such assistance. This involves determining when the Agency has the financial and personnel (experts) available to expertise and assist in the promotion and development of fundamental rights. Each activity must be aligned with its capacity for action, avoiding dispersion or duplication.

Second, identify the areas where it can be most effective. The scope of fundamental rights is vast and the needs for action are growing, but material and human resources are scarce. The FRA therefore needs to prioritise the areas of greatest interest, for

example on the basis of the track record, coherence and expertise of its staff, and where it can act as a transformative or catalytic actor. Hence, its five-year strategic plans are a first step, although it needs a longer-term strategic plan.

Third, prioritising areas of assistance and expertise to the Union institutions in the field of fundamental rights and to the Member States when implementing Union law. It is not easy to prioritise the development of some rights over others because of the high sensitivity of the subject matter, but creative and innovative work should be done in this regard. The FRA could provide ex ante technical assistance during the design of new laws, plans or policies (before their adoption) or by developing ‘rights impact’ methodologies for legislative or regulatory use.

In the end, the aim is to concentrate the lines of work it has been developing in order to gain in effectiveness and efficiency. By applying these three premises, the work will not only be effective, as it already is, but also efficient, thus fulfilling the requirements set out in the FRA's mandate.

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# International and regional legal protection of the dignity and integrity of the person: Foundations for a more human health system in the face of health authoritarianism

Doi:10.5281/zenodo.16527586

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## Introduction

Undoubtedly, medicine, and in particular modern medicine, has profoundly transformed the reality and history of mankind. This fact is supported by the trend in basic health indicators, such as general and infant mortality and life expectancy, which has been improving since the second half of the 19th century, as can be seen in those states where this information is available

(McKeown, 1982) For most of our existence, life expectancy remained around 40 years, (Novartis, 2023) with high infant mortality and the devastating impact of numerous diseases. However, from the 19th century onwards, scientific rigour began to be consolidated in medical practice, which, together with advances such as penicillin and the discovery of the structure of DNA, allowed for the effective treatment of various pathologies, including those of genetic origin. (Novartis, 2023) In addition, greater accessibility to medical treatment has contributed to a marked increase in life expectancy and quality of life.

Today, life expectancy has increased significantly: in the EU ‘it stands at almost 79 years for men and 84 years for women”, (Unión Europea, 2025) and in the US ‘for women it is 81 years, compared to 76 years for men”. (Organización para la Cooperación y el Desarrollo Económicos (OCDE), 2025) While in some regions of the world, such as Africa, life expectancy is still below the global average, it is possible to observe a significant increase from a historical perspective. According to a recent assessment by the World Health Organisation, ‘life expectancy in Africa increased by an average of ten years per person between 2000 and 2019 (...) reaching 56 years in 2019, compared to 46 in 2000” (RETS - Rede Internacional de Educação de Técnicos em Saúde, 2022).

Alongside medical advances and scientific achievements, this positive trend is also the result of the establishment of public policies and regulatory instruments that have contributed significantly to the improvement of living (health, education, housing, mobility, etc.) and working conditions (abolition of child labour, reduction of working hours, improvement of wage and material conditions, among others). In particular, health policies have played a key role in promoting a system of universal coverage, guaranteeing access to increasingly effective preventive and therapeutic measures, thus favouring well-being and equity in health care. (Benavides, 2018) In the opinion of Benavides, Delcós and Serra (2018) 'These improvements are not unrelated to the emergence and consolidation of the welfare state throughout the 20th century, especially from the second half of the 20th century onwards, which has been expanding its social policies in terms of coverage and generosity'. A recent study comparing the increase in life expectancy in the United States and 17 other Organisation for Economic Co-operation and Development (OECD) states with similar income levels finds that the lower increase in life expectancy in the United States compared to the rest of the states is mainly explained by the lower generosity of its welfare state (Beckfield, 2016).

Therefore, in this paper, the importance of medical advances,

scientific discoveries and the consolidation of public health policies as determining factors in the promotion of longevity and the well-being of humanity cannot be overemphasised. However, it is also crucial to critically examine how, under a paternalistic approach, these same strategies can be transformed into authoritarian practices that over-concentrate decision-making, suppress debate and exclude divergent perspectives. In this context, the purpose of this paper is to delve into authoritarian tendencies within healthcare systems, acknowledging the achievements of modern medicine, but warning about the risks of implementing an inflexible and non-deliberative healthcare model.

From this perspective, we believe that international recognition of the dignity and integrity of patients, through specific binding legal instruments, is essential to combat health authoritarianism in its three dimensions: medical, political and scientific. This recognition would not only promote equitable treatment between doctor and patient, but would also facilitate protection against health errors, allowing the patient to be recognised as a subject of rights and not as an unequal being.

In a political, health and scientific environment where uniform measures are implemented that tend to treat patients as a homogenous group, without taking into account their individual

needs, it is essential to protect the dignity and integrity of patients through a humanistic approach. This approach must place the patient's dignity at the centre of all healthcare actions, guaranteeing the patient's right to integrity and offering comprehensive and personalised care. On the one hand, it is crucial to consider the patient's physical conditions, ensuring respect for and preservation of their bodily integrity. On the other hand, it is essential to take into account the ethical and cultural aspects that shape their identity, including their beliefs, values and convictions, in order to provide care that respects their autonomy and well-being.

This humane and holistic approach aims not only to protect the biological and physiological aspects of the patient, but also to respect the patient's moral autonomy, recognising the importance of the patient's decisions about his or her own well-being and treatment. In this way, it avoids imposing a uniform regulatory or medical framework that ignores the individuality of the patient. Incorporating these dimensions into health care reinforces the dignity of the patient, treating him/her as an active subject in making decisions about his/her health, rather than as an object of treatment. It also promotes their autonomy, ensuring that they can exercise meaningful control over decisions affecting their life and well-being, while respecting their personal beliefs and

convictions. This contributes to a more humanised, ethical and respectful healthcare for the whole person.

In that sense, the three Main Objectives of this paper are to:

1.Analyse the risks of health authoritarianism in its medical, political and scientific dimensions, and its impact on the dignity and integrity of the patient.

2.Examine the importance of international recognition of the dignity and integrity of patients as a fundamental right in the fight against authoritarian practices in health care systems.

3.Propose a humanistic and holistic approach in health care, ensuring respect for the dignity, integrity and personal values of patients, as opposed to uniform and centralised models.

This work will adopt an analytical and comparative approach, reviewing academic literature, key EU case law, and international examples of health standards and practices. Case studies of relevant case law from the European Court of Human Rights, the Court of Justice of the European Union and other regional and international human rights bodies, such as the Inter-American Court of Human Rights, will be undertaken to assess the impact of health policies on human dignity.

The hypothesis of this paper is that a humanistic and holistic approach to health care, underpinned by legal recognition of patients' dignity and integrity, can mitigate the risks of health

authoritarianism, promoting a health system that is more equitable, respectful of human rights and focused on individual well-being.

**The danger of healthcare authoritarianism**

For the purposes of this paper, we understand healthcare authoritarianism in its broadest sense, encompassing three interrelated but distinct dimensions: medical authoritarianism, political healthcare authoritarianism and scientific healthcare authoritarianism. Medical authoritarianism has been extensively studied in the bioethics literature, especially in relation to its impact on doctor-patient dynamics and individual autonomy, while political authoritarianism and scientific authoritarianism have received less attention.

Healthcare authoritarianism in its medical dimension manifests itself when the healthcare professional exercises his or her authority in an abusive manner, altering communication and respect in the relationship with the patient. This phenomenon is based on the unconditional submission of the patient to the doctor's decisions, with no room for dialogue or autonomy (Villalbí, 2007).

Far from promoting a therapeutic relationship based on mutual respect and shared decision-making, medical authoritarianism

imposes unilateral dominance. This forces the patient to assume a duty of obedience, relegating his or her right to question, participate or decide about his or her own treatment. Instead of person-centred care, a hierarchical model is established where the doctor's authority takes precedence over the patient's dignity and autonomy, generating a relationship of subjugation rather than care (Martins, 2003).

In this sense, Afonso Persilla and Nobalbo Aguilera (2012) point out that ‘conduct that demands submission, obedience, lack of respect for the autonomy, freedom and dignity of the patient; with a purpose centred on the professional's own knowledge, we will be faced with authoritarianism, which indicates power behaviours and damages any bioethical stance; it provokes a negative and limiting influence on the satisfaction of the patient's needs and growth, and delivers an asymmetrical, unequal and dehumanised practice” (González, 2012).

In this context, Bellón Sánchez (2015) focuses on a historical example of woman-centred medical authoritarianism, so-called obstetric violence, a term that was first used in Venezuela in 2007, within ‘La ley orgánica sobre el derecho de las mujeres a una vida libre de violencia’ (The organic law on women's right to a life free of violence)’ (ACNUR, 2008) and which would then spread rapidly and internationally. This form of authoritarian

violence based on sex implies ‘the appropriation of women's bodies and reproductive processes by health personnel, which is expressed in a dehumanising treatment, in an abuse of medicalisation and pathologisation of natural processes, bringing with it a loss of autonomy and the ability to decide freely about their bodies and sexuality, negatively impacting on women's quality of life” (Bellón Sánchez, 2015).

In its scientific dimension, we understand health authoritarianism as a form of ideological imposition in which scientific knowledge, conceived as unquestionable and absolute, is set up as the only legitimate source of truth and guidance for society. Under this paradigm, science ceases to be a method of enquiry open to questioning and falsifiability and is transformed into a dogma that defines not only what is true, but also what is morally acceptable and socially normative. It is characterised by the suppression of critical debate, the sacralisation of science and the conversion of its popularisers into unappealable authority figures. In this regard, as Giménez Gallego (1997) notes: “Science without forums for discussion is another important source of distortion of the scientific system. Research has allowed more than a few scientists to amass huge fortunes, especially in areas such as biotechnology and biomedicine. This has largely destroyed the ‘fair play’ that was typical of scientific

environments until a few decades ago. Nowadays, people no longer go to scientific congresses and meetings to discuss certain preliminary results or problems in order to receive suggestions for solving them. In science, publication has an almost ‘magical’ value. And the first to publish results in a peer-reviewed journal is simply considered the discoverer of those results, which confers numerous rights and privileges. Consequently, no one today would even think of discussing results before they have been published in one of these journals” (Gallego, 1997).

This model of thinking can lead to the annulment of individual freedom of choice and the subordination of politics and ethics to what is considered ‘scientifically correct’, establishing a new form of totalitarianism based on scientism. In this sense, according to Oreskes (2021): “One popular move is to insist that science is right—full stop—and that once we discover the truth about the world, we are done. Anyone who denies such truths (they suggest) is stupid, ignorant or fatuous”.

Or, as Nobel Prize–winning physicist Steven Weinberg said, “Even though a scientific theory is in a sense a social consensus, it is unlike any other sort of consensus in that it is culture-free and permanent. Well, no. Even a modest familiarity with the history of science offers many examples of matters that scientists thought they had resolved, only to discover that they needed to

be reconsidered. Some familiar examples are Earth as the centre of the universe, the absolute nature of time and space, the stability of continents, and the cause of infectious disease" (Oreskes, 2021).

Science is a process of learning and discovery, and sometimes we learn that what we thought was right is wrong. Science can also be understood as an institution (or better, a set of institutions) that facilitates this work. To say that science is "true" or "permanent" is like saying that "marriage is permanent." At best, it is a bit off-key. Marriage today is very different from what it was in the 16th or 18th century, and so are most of our "laws" of nature" (Sociedad Chilena de Salud Mental, 2022).

In this context, true science should not be understood as a set of absolute truths, but as a dynamic process based on the formulation of hypotheses, experimentation and the constant evaluation and, if necessary, refutation of previous theories. According to Popper, the scientific model is based on falsificationism, according to which no scientific statement should be considered definitive, but subject to revision and critique (Sociedad Chilena de Salud Mental, 2022).

"In scientific research, the method of trial and error elimination and testing of hypotheses is used. All testing, even with intuition, has the nature of a conjecture or a hypothesis; at the scientific

level, discoveries are revolutionary, creative and must be objects open to investigation; consequently to science, scientific progress or discovery depends on the instruction and selection of a conservative or historical element and the revolutionary use of testing and elimination of error through criticism seeking to disprove theories. Objectivity rests on criticism, critical discussion and critical examination of experiments. The main obstacles to the progress of science are of a social nature and are divided into economic and ideological ones, but the greatest danger in scientific theory is that it may become an intellectual fad" (Jiménez Garnica, 2022) or an imposition.

Peteiro points out that science, as an ally of reason and knowledge, distances itself from the scientism that dominates current social discourse. In his opinion, although we live in an era that promotes transparency, paradoxically, scientism generates opacity in debate and decision-making (Peteiro Cartelle, 2010). For this author, scientism is 'an ethical aberration that facilitates a new kind of fascism'. Science is admirable and admired. It is only when it is put before the interests of the people that the problems begin. And it seems that there is a current that is turning Science into the religion of our times (Peteiro Cartelle, 2010).

However, in times of health crisis, such as the COVID-19

pandemic, trends towards scientific authoritarianism have been observed, where certain positions are presented as unquestioned and those who put forward alternative approaches are discredited (Ioannidis, 2020). While it is essential that public health decisions are based on the best available evidence, the closure of scientific debate and the imposition of a single narrative can undermine progress and trust in science (Ioannidis, 2020).

Therefore, a balance is needed between scientific authority and openness to critical scrutiny. Science advances through the confrontation of ideas and the revision of paradigms, not through the imposition of immovable criteria. In the field of public health, this implies fostering an evidence-based debate, where a plurality of approaches allows for a better understanding of health problems and the formulation of more robust and legitimate policies (Merton, 1973).

Finally, we understand health authoritarianism in its political dimension, as pointed out by Ramiro Avilés and Lobo (2010) like all actions by the public authorities that affect citizens' rights or duties require justification. In addition to being proportional to the desired aim and not affecting the essential content of the law, they require a rational explanation in order to be legitimate in a state governed by the rule of law. In order to justify health measures, it is not enough to recite legal rules or economic

principles. It is essential to justify them with an argumentation that allows reasonable agreements to be reached, by means of an exchange capable of eliminating bad reasons and those that seem good but are not (Atienza, 2004). In addition to this rationality criterion, the criteria of consistency and coherence (with the system and with other decisions) and consequentialism (that the consequences are acceptable and do not endanger valuable goods and states of affairs) must be observed) (Lora Deltoro, 2009).

Finally, the justification must be based on ethical values and principles, since in any practical discourse, such as economic or legal discourse, ethical reasons are the ultimate ones and prevail over any other instrumental or strategic ones (Atienza, 2004) The purpose of justification and argumentation is therefore to provide good reasons with which to legitimise the actions of the public authorities and to convince those to whom the decision is addressed of the goodness or necessity of the decision. They must be accompanied by communication, dialogue, pedagogy and persuasion, which are essential to forge alliances between citizens' organisations, administrations and companies that have the greatest influence on the factors that affect health (Atienza, 2004). In legal terms, the effectiveness of the rule is sought without resorting to the use of force (Atienza, 2004).

**Healthcare humanism as a limit to healthcare authoritarianism**

The most effective prevention of health authoritarianism, in any of its three dimensions, lies in full respect for human rights, as a fundamental basis for the construction of an authentic health humanism. Health humanism, in its political, medical and scientific dimensions, is configured as an integral response to the limits of the biologicist paradigm that has historically dominated health care (Ruiz Salvador, 2006). This means that, from a political perspective, the redesign of public policies that recognise health as a multidimensional phenomenon, intimately linked to people's living conditions and social environment, should be promoted.

In the medical field, a clinical practice that focuses on the person as a biological, psychological and social being, considering not only the disease, but also the suffering, spirituality and context of the patient, should be promoted. Finally, at the scientific level, an interdisciplinary and integrative vision of knowledge should be advocated, where science contributes to the understanding of health as a dynamic process immersed in the social structure, with biological, ecological, sociological, psychological, economic and organisational dimensions (Ruiz Salvador, 2006). Thus, health humanism not only rescues the value of fields

forgotten by the traditional biomedical approach, but also proposes a model of health that is more just, empathetic and coherent with human dignity.

In this same vein, Cepeda Díez, (2014) focusing on the medical dimension of health humanism, explains that ‘when we mention humanism in health we refer to that attitude of treating people with dignity and respect, to models of relationship and care centred on the person and to the treatment of the human being as a whole, in an integral way’ (Cepeda Díez, 2014).

Laín Entralgo, (1971) in relation to the medical humanities, conceives health humanism as ‘the attitude of the health professional when he supports his knowledge and practice not only on natural knowledge, but also draws on the humanities to improve both diagnosis and therapy’.

Thus, a truly humane healthcare model, far removed from classic healthcare paternalism and free from any form of authoritarianism, must have at its core the defence and protection of human dignity and the integrity of the person, understood as fundamental values that guarantee respect for the autonomy, rights and well-being of each individual. These principles recognise that each human being is unique and must be treated fairly, without discrimination, ensuring their right to decide about their life and health. Protecting the dignity and integrity of

individuals fosters an environment of trust, empathy and fairness, essential elements for a healthcare system that values the whole human being, not just as a patient or subject of treatment.

An approach of this kind recognizes that each individual is unique, with their own values, beliefs, life paths, and particular contexts. Therefore, health policies should aim to promote the person in all their dimensions, placing them at the centre of the system—not as a mere recipient or passive subject of decisions made from a top-down logic, but as an active protagonist in their own care and well-being.

In this sense, as was explained in the previous sections, historically, some of the early codes and practices of the medical profession appeared to promote absolute paternalism as appropriate professional conduct. The priest-like status of doctors historically encouraged a paternalistic approach, which patients readily accepted (Komrad, 1983). Therefore, moving away from classical paternalism means no longer viewing the patient as a passive subject who simply follows medical orders, but rather as an active agent in the care of their own health. Human dignity implies respecting their autonomy, their decisions, and their right to be heard.

Freeing the healthcare system from any form of authoritarianism helps foster more horizontal and collaborative relationships

between professionals and patients, promoting trust, empathy, and shared responsibility. Only through this approach is it possible to build a fair, inclusive, and truly person-centered healthcare system.

As for scientific authoritarianism, it is challenged through a model based on inclusive dialogue, where scientific knowledge is built by respecting the patient's experience and considering all authoritative voices—even those that dissent—without discrediting them simply for not aligning with the majority view. Science is neither infallible nor absolute, and as we have seen, even scientific consensus can contain errors. Therefore, science should be viewed as a flexible tool that adapts to the needs and rights of each individual, rather than as an absolute, rigid, and unchangeable power.

From a more practical perspective, and with the intention of building a truly humanistic healthcare model, it is absolutely essential to enhance patient dignity, integrity and safety. In this vein, healthcare institutions must foster a culture that encourages error reporting and implements corrective measures. Identifying risk factors and improving protocols, particularly in areas such as communication and infection control, can significantly reduce adverse events. Ultimately, while most medical professionals are highly skilled and dedicated to patient care, their inherent human

fallibility underscores the necessity of continuous monitoring, education, and systemic reform to minimize preventable harm (Rodziewicz, 2018).

Uncovering the cause of these errors, as well as providing viable solutions to avoid these errors from occurring, is challenging. However, patient safety can be improved by identifying the contributing factors and events that result in medical errors, developing multifaceted prevention protocols, and implementing these strategies at various healthcare levels. Healthcare professionals should be familiar with the different types of medical errors to understand better the adverse events that may be caused (Rodziewicz, 2018). This approach not only aims to reduce medical errors but also emphasizes the need for scientists and healthcare professionals to act with greater empathy and respect toward patients—recognizing their humanity and considering their voices as an integral part of the healthcare process—thus contributing to the creation of a more humane healthcare system.

We often think of healthcare authoritarianism as a distant threat, characteristic of non-democratic regimes or historically outdated contexts. However, in this work, we argue that the COVID-19 pandemic demonstrated that even in well-established democratic systems—such as those in Europe—it is surprisingly easy to slip

into authoritarian practices, and even models, within the healthcare sphere. Urgency, fear, and social pressure created an atmosphere in which exceptional measures were accepted without adequate scrutiny, weakening human rights such as autonomy, transparency, and informed consent.

This global experience revealed that healthcare authoritarianism is not a danger of the past, but a real and present threat that can emerge even in contexts that claim to uphold human dignity and freedom. Therefore, strengthening a humanistic model is not just an ethical aspiration but a necessity to safeguard democratic principles in clinical practice and public health policies.

In this regard, as Ollerenshaw points out in the context of the COVID-19 pandemic "authoritarianism was associated with greater concern over COVID-19 and, in turn, increased willingness to engage in protective health behaviours, support restrictive public health measures, and support economic interventions amidst the pandemic-induced downturn" (Ollerenshaw, 2024).

According to Parry, Asenbaum and Ercan (2021), "The COVID-19 pandemic has been pervasive, affecting every aspect of daily life worldwide, including democracy. Parliaments were suspended; public protests cancelled. In many countries, the "state of emergency" has served as a justification for

authoritarian leaders to further strengthen their grip on power." These statements illustrate how, in extraordinary contexts, global authoritarianism cannot only be imposed with ease but may even be perceived as an effective means of managing crises. However, this perception is deeply dangerous, as it weakens the demand for critical oversight and dilutes the commitment to a healthcare model that is truly centred on human rights and active citizen participation.

In the following sections, we will analyse the fundamental pillars that must compose a humanistic healthcare model, one that combats healthcare authoritarianism in its three dimensions: medical, scientific, and political. We will begin our analysis by addressing human dignity and the integrity of the person in general terms, before delving into how these values apply to the patient—that is, the dignity and integrity of the patient. Subsequently, we will examine how these principles are articulated around specific rights, with particular emphasis on the patient's autonomy and the right to free and informed consent. Throughout this work, in addition to reviewing the main international and regional normative instruments, we will focus on the framework of the European Union, particularly the Charter of Fundamental Rights of the EU.

**Human dignity and personal integrity as the foundations of healthcare humanization: A review of international and regional normative frameworks**

In international human rights law, dignity and personal integrity are closely interconnected concepts, yet they hold distinct meanings and fulfill different roles in the protection of the individual. Human dignity is a fundamental principle underlying all human rights and is recognized as intrinsic and inherent to every person, without distinction.

In this sense, Ruiz (2019) explains that human dignity is a complex concept, deeply rooted in philosophy and theology, that cannot be easily captured by a legal or positive definition. There is no clear consensus on its foundation, nature, or content, which leads to diverse interpretations. Despite this, it is generally considered that human dignity is an inherent quality of the human being, belonging to its essence by the mere fact of being human, without any distinction.

Dignity is not granted nor can it be removed by any state authority; it is something that belongs to every human being simply by virtue of their humanity. In this sense, it has an intrinsic character, as something inherent to humanity, and serves as the foundation of all human rights and fundamental freedoms. Various philosophical and religious schools have attempted to

ground the concept of human dignity.

For some, like Christianity, dignity stems from the fact that human beings are created in the image and likeness of God. This belief underscores the inherent worth of every individual, who is seen as a reflection of the divine and deserving of respect and honour. On the other hand, thinkers like Immanuel Kant argue that dignity is an intrinsic principle of humanity, independent of any transcendental belief (Ruiz, 2019).

The recognition of human dignity is established in major international instruments, such as the Universal Declaration of Human Rights (UDHR), whose Preamble and Article 1 state that "All human beings are born free and equal in dignity and rights". Similarly, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) emphasize dignity as the foundation of human rights in their respective preambles.

At the regional level, it is noteworthy that, pioneeringly, the American Convention on Human Rights (ACHR), adopted in 1969 and in force since 1978, expressly recognizes human dignity in several provisions of its articles: Article 5 protects human dignity specifically in relation to individuals deprived of their liberty, linking it directly with the right to personal integrity, Article 6 establishes human dignity as a limitation of forced

labour imposed upon individuals in detention, and Article 11 is dedicated exclusively to the protection of honour and dignity.

In contrast, within the European context, the European Convention on Human Rights (ECHR) does not explicitly mention human dignity. However, this fundamental principle has been implicitly integrated through the interpretation of the European Court of Human Rights (ECtHR). Through its jurisprudence, the European Court of Human Rights (ECtHR) has indeed considered human dignity as a central value for the interpretation and application of various rights. Ochoa notes that "it is striking that the concept of human dignity is not explicitly mentioned in the London Statute of 1949, which established the Council of Europe, or in the European Convention on Human Rights (ECHR) of 1950, even though the concept of dignity appeared in the preparatory works of the Convention. However, the ECtHR has made extensive use of the concept of human dignity in its rulings, and it has affirmed that "the true essence" of the Convention is "the respect for human dignity and freedom" (...)" (Ruiz, 2019).

In this way, although the ECHR has not recognized an autonomous right to human dignity, it has stated that the notion of dignity underlies all the rights recognized in the ECHR. In addition to Article 3 of the ECHR, the Court has linked dignity

with the right to life (Article 2); the prohibition of slavery, servitude, and forced or compulsory labour (Article 4); the rights to liberty and security (Article 5), to a fair trial, including the excessive length of judicial proceedings and the presumption of innocence (Article 6), and the principle “no punishment without law” (Article 7); the right to private and family life (Article 8), freedom of expression (Article 10), and the prohibition of discrimination (Article 14).

Maurer considers that, for the ECHR, the principle of respect for human dignity is a fundamental ethical principle that underlies the rights recognized in the Convention and serves as a principle for the material interpretation of these rights.

In the same vein, D’Ory notes that the invocation of human dignity has allowed the ECHR to adopt an evolutionary and dynamic interpretation of various provisions of the Convention. As a result, the Court has strengthened the protection of particularly vulnerable groups, incorporating a humanizing approach in the safeguarding of fundamental rights and freedoms, thereby reaffirming the Convention’s character as a living instrument.

Furthermore, as Ochoa points out, the Court frequently resorts to the notion of human dignity to emphasize the severity of certain practices, highlighting their incompatibility with the essential

principles of the Convention (OCHOA).

The European Court of Human Rights (ECHR) made its first reference to human dignity in the Tyrer case, which dealt with the imposition of corporal punishment, categorizing it as degrading treatment. In assessing the severity of these acts, the Court stated that one of the main purposes of Article 3, which prohibits torture and inhuman or degrading treatment or punishment, is "to protect the dignity and integrity of individuals".

Beyond the Tyrer judgment, the cases of S.W. and C.R. v. the United Kingdom are particularly relevant, in which the Court first proclaimed that "the true essence" of the Convention is "respect for human dignity and freedom", a formulation that has been reiterated on numerous occasions and in relation to rights of different nature. Later, in the Bouyid judgment (2015), the Court even stated that "any interference with human dignity strikes at the very essence of the Convention".

Other key rulings have consolidated this approach. In Pretty v. the United Kingdom (2002), the ECHR emphasized that human dignity is a principle that permeates all the rights recognized in the Convention. Likewise, in Tănase v. Moldova (2010), the Court reaffirmed that human dignity guides the interpretation of fundamental rights, with particular emphasis on cases involving inhuman or degrading treatment.

The European regional scope is not limited to the ECHR or the interpretation of human dignity by the ECHR. In the context of the European Union, in 2000, the European Parliament, the Council, and the Commission solemnly proclaimed the Charter of Fundamental Rights of the European Union (CFREU) in Nice, thereby consolidating a comprehensive normative framework for the protection of fundamental rights within the community. After being revised, it was proclaimed again in 2007. However, its solemn proclamation did not grant the Charter legally binding status.

The adoption of the Draft Constitution for Europe, signed in 2004, would have given the Charter legally binding status. However, due to the failure of the ratification process, the Charter remained a mere declaration of rights until the adoption of the Lisbon Treaty.

On December 1, 2009, the Charter became legally binding. Now, according to Article 6, paragraph 1, of the Treaty on European Union (TEU), “the Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union [...], which shall have the same legal value as the Treaties”. Therefore, the Charter is part of the primary law of the Union and, as such, serves as a benchmark for assessing the validity of derived law and national measures (Parlamento

Europeo. 2017).

In this way, the CFREU sets out the fundamental rights that the Union must respect, as well as those that Member States must uphold when implementing Union law. It is a legally binding instrument, designed to formally recognize and give visibility to the role that fundamental rights play within the Union's legal order.

Unlike the European Convention on Human Rights (ECHR), the Charter of Fundamental Rights of the European Union (CFREU) expressly and autonomously recognizes the right to human dignity in various provisions. In its preamble, it highlights human dignity as one of the essential values on which the European Union is founded, further emphasizing that, together with equality and solidarity, it constitutes an indivisible and universal value that is part of the spiritual and moral heritage of the EU. In line with the importance the Charter assigns to human dignity, Title I is entirely dedicated to this principle, addressing it in general terms and giving it legal concreteness in its first article.

This article enshrines the inviolable right of EU citizens to human dignity, explicitly establishing the obligation to respect and protect it. For its part, the Court of Justice of the European Union (CJEU) has addressed the principle of human dignity on various occasions, considering it a fundamental value in the legal

order of the European Union, as seen in Case C-36/02, *Omega Spielhallen* (2004), in which the CJEU upheld the decision of the German authorities to ban a simulated killing game that depicted acts of violence against individuals.

The Court held that "such a measure cannot be regarded as an unjustified restriction on the freedom to provide services, since, on the one hand, the protection of fundamental rights—given that the Community legal order undeniably seeks to ensure respect for human dignity as a general principle of law—constitutes a legitimate interest that may, in principle, justify a restriction on obligations imposed by Community law, even under a fundamental freedom guaranteed by the Treaty, such as the freedom to provide services" (Tribunal de Justicia de la Unión Europea, 2004).

Also, in Case C-233/18, *Haqbin* (2019), the CJEU emphasized that disciplinary measures must not compromise an individual's human dignity, stressing that respect for dignity is essential in the treatment of asylum seekers. "More specifically, with regard to the requirement to preserve the dignity of living conditions, (…) it follows that this aims to ensure full respect for human dignity and to promote the application, in particular, of Article 1 of the CFREU, and must therefore be applied accordingly. In this regard, respect for human dignity within the meaning of this

article requires that the person concerned not be placed in a situation of extreme material deprivation that prevents them from meeting their most basic needs—such as shelter, food, clothing, and hygiene—and that, as a result, undermines their physical or mental health or places them in a state of degradation incompatible with such dignity".

Like the Inter-American Court of Human Rights and the European Court of Human Rights, the CJEU has carried out interpretative work that links human dignity to various dimensions beyond the prohibition of torture and inhuman or degrading treatment. Through its case law, the CJEU has integrated human dignity as a fundamental principle, ensuring its protection across different areas and establishing it as an essential pillar in the interpretation and application of European Union law.

In Africa, following the adoption of the African Charter on Human and Peoples' Rights (ACHPR) in 1981, which entered into force in 1986, the importance of human dignity is expressly and extensively recognized, making it one of the few regional normative instruments to do so. It is noteworthy that, in this regard, the ACHPR precedes the European Convention on Human Rights, which does not specifically provide for the protection of human dignity, and it also does so before the

Charter of Fundamental Rights of the European Union, which does establish such protection.

In the preamble of the ACHPR, human dignity is proclaimed as one of the “essential objectives for the achievement of the legitimate aspirations of the African peoples”, establishing its fundamental role in the promotion and respect of the rights of the continent’s peoples. Furthermore, dignity is explicitly linked to a collective value in the context of the struggle against colonialism, underscoring its importance in the identity and sovereignty of African peoples.

Regarding the provisions, Article 5 of the ACHPR addresses human dignity in its individual dimension, recognizing it as an inherent right of the person. Furthermore, it categorically establishes the prohibition of practices that violate this dignity, such as torture, cruel, inhuman, or degrading treatment, as well as slavery and the slave trade, in clear recognition of the suffering stemming from the continent’s colonial history. This normative approach reflects a position consistent with other regional systems where, both at the normative and jurisprudential levels, human dignity is linked to torture or inhuman and degrading treatment.

On the other hand, personal integrity refers to the protection of the individual against physical, psychological, or moral harm,

ensuring that no person is subjected to torture, cruel, inhuman, or degrading treatment. In this sense, it is defined as the “right that protects the inviolability of every person against attacks on their body or spirit, as well as against any interventions in these rights that lack their consent” (Real Academia Española, s. f.).

The key difference between these two concepts lies in the fact that dignity is a general principle that underpins all human rights, while personal integrity is a specific right that protects individuals from harm affecting their physical or psychological well-being. Although both concepts are closely related—since the violation of personal integrity entails an infringement on dignity—dignity has a broader and more transversal character, while integrity is a specific right with concrete legal protections.

Regarding the protection of personal integrity in international human rights law, it has traditionally been framed within the prohibition of torture and cruel, inhuman, or degrading treatment. This approach is reflected in key instruments such as the Universal Declaration of Human Rights (Article 5), the International Covenant on Civil and Political Rights (Article 7), and the European Convention on Human Rights (Article 3), all of which guarantee the prohibition of such practices without expressly recognizing personal integrity as an autonomous right.

This interpretative trend is also observed in other international

treaties. For instance, the International Covenant on Civil and Political Rights, in its Article 7, establishes the prohibition of torture and cruel, inhuman, or degrading treatment, without expressly providing for the right to personal integrity as a separate category. Similarly, the Universal Declaration of Human Rights states in Article 5 that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, without explicitly referencing personal integrity as an autonomous right.

However, the interpretative work of international human rights protection bodies has allowed for a progressive expansion of the concept of personal integrity. This has transcended the mere prohibition of torture to encompass aspects related to dignity, health, and the well-being of the individual.

This evolution is reflected in various decisions of the United Nations Human Rights Committee, which have contributed to consolidating a broader and more protective interpretation of this right, as seen in cases such as: *L.M.R. v. Argentina* (CDH, 2011): The Human Rights Committee concluded that the state's refusal to allow a legal abortion for a young woman with a disability constituted inhuman treatment and affected her personal integrity. The Committee explicitly stated that “the imposed obligation to continue with the pregnancy, against her will, constituted cruel

and inhuman treatment and thus a violation of her right to integrity under Article 7 of the Covenant" (Comité de Derechos Humanos de las Naciones Unidas, 2011).

In the case *L.N.P. v. Argentina* (CCPR, 2011), the Human Rights Committee clarified that "the right of every person to privacy implies the obligation of the state not to interfere in their private life and, therefore, it enshrines not only protection against the potential public exposure of personal information but also the physical and moral integrity of an individual, and consequently includes their personal dignity (...) Therefore, the state is obliged to provide the necessary protection against such violations. The Committee further clarifies that the right to integrity not only refers to physical pain but also to moral suffering, and this protection is particularly important when it involves minors" (Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), 2011).

At the regional level, once again, as with the express and autonomous recognition of the right to human dignity, the American Convention on Human Rights represented a pioneering advancement in this area by explicitly establishing the right to personal integrity in its Article 5. Unlike other treaties that do not protect it autonomously or only address it in the context of the prohibition of torture and degrading treatment, the American

Convention grants this right an independent dimension, recognizing both its physical and psychological aspects. This explicit and differentiated inclusion of personal integrity marked a milestone in the evolution of human rights protection in the inter-American system, granting it a broader and more robust scope.

Just as with the right to human dignity under the ECHR, this convention does not explicitly and autonomously recognize the right to personal integrity. Instead, its protection has progressively been derived from the evolving interpretation by the European Court of Human Rights, especially from Article 3, which prohibits torture and inhuman or degrading treatment. In the case *Kalashnikov v. Russia* (ECtHR, 2002), the European Court of Human Rights held that overcrowding and unsanitary conditions in prison could violate Article 3 of the ECHR (prohibition of inhuman and degrading treatment), affecting the personal integrity of the detainee. Likewise, the ECtHR contributes to the evolving trend of linking the right to personal integrity beyond torture, associating it with dimensions such as health and well-being.

In *Opuz v. Turkey* (ECtHR, 2009), the Court condemned Turkey for failing to protect a woman who was a victim of domestic violence, recognizing that the state's inaction affected her

personal integrity and that of other women in similar risk situations. (Tribunal Europeo de Derechos Humanos, 2009) *Pentiacova and others v. Moldavia* (TEDH, 2005): The Court examined the lack of access to appropriate medical treatments (hemodialysis) as a potential violation of personal integrity (Tribunal Europeo de Derechos Humanos, 2009).

Regarding the Charter of Fundamental Rights of the European Union (CFR), like the American Convention on Human Rights (ACHR), it expressly and autonomously recognizes the right to personal integrity in its Article 3. In its first paragraph, this right is enshrined in a general manner, allowing its connection to various areas. Furthermore, it emphasizes its dual dimension, both physical and psychological, thereby highlighting its integral role in the protection of dignity and well-being.

Just as the Inter-American Court of Human Rights (IACHR) and the European Court of Human Rights (ECtHR) have done, the Court of Justice of the European Union (CJEU) has developed an interpretative approach that articulates the right to personal integrity in multiple dimensions. This right has been consolidated as a fundamental principle within the legal framework of the European Union, as evidenced in Case C-205/21 of January 26, 2023, *V.S. and Ministerstvo na vatreshnite raboti, Glavna direktsia za borba s organiziranata prestapnos*, a preliminary

ruling presented in the context of a criminal procedure initiated against V.S., who, after being investigated, refused to allow the police to collect her biometric and genetic data for the purpose of registration.

The Court emphasized that the processing of sensitive personal data, such as biometric and genetic data, must be authorized by a clear and precise legal basis in national law, must be strictly necessary for the purposes pursued, and must always comply with the fundamental rights established in the CFR, including the right to personal integrity (Tribunal de Justicia de la Unión Europea, 2023).

In Case C-247/23, dated March 13, 2025, the CJEU ruled that the rectification of data related to gender identity cannot be conditioned on the requirement to prove undergoing gender-affirming surgery. Specifically, the CJEU stated: “(…) such an administrative practice undermines the essence of the fundamental rights guaranteed by the Charter, particularly the essence of the right to personal integrity and the right to respect for private and family life, as outlined in Articles 3 and 7, respectively. (…) Article 7 of the Charter protects a person's gender identity as a constitutive element and one of the most intimate aspects of their private life. Thus, this provision encompasses the right of every individual to determine the details

of their human identity, which includes the right of transgender people to personal development and physical and moral integrity, as well as to the respect and recognition of their gender identity" (Tribunal de Justicia de la Unión Europea, 2025).

In the African context, the protection of both human dignity and the integrity of the person is clearly and forcefully articulated through the African Charter on Human and Peoples' Rights (ACHPR), which constitutes one of the most advanced regional instruments in this area. Unlike other international texts, the ACHPR expressly recognizes both the dignity, as we have previously mentioned, as well as the integrity of the person as human rights, without the need for extensive interpretation or judicial rulings to affirm them.

In particular, Article 4 of the Charter categorically states that: "*Every human being shall be entitled to respect for his life and the integrity of his person*," a formulation that allows for no conditions or exceptions, thereby reinforcing its absolute and universal character.

This direct and unambiguous recognition positions the ACHPR as a regulatory instrument ahead of its time, by explicitly incorporating rights that, in other regional systems—such as the European one—have required a progressive jurisprudential evolution. For example, while the European Convention on

Human Rights (ECHR) does not expressly include the right to human dignity, and its development has been necessary through the doctrine of the European Court of Human Rights, the ACHPR, however, has recognized it unequivocally since its inception.

Furthermore, the African Charter chronologically precedes the Charter of Fundamental Rights of the European Union (CFREU), which was proclaimed much later, in 2000, and does explicitly include the right to dignity and integrity, as we have noted. In this regard, it can be affirmed that the African system demonstrates a strong and early commitment to the dignity and integrity of the human person, placing them at the core of its conception of human rights.

Regarding the Arab Charter on Human Rights of 2004, which is almost contemporaneous with the CFREU, we observe that human dignity is not only recognized as a legal value, but by initially opening the preamble as a supreme value with the phrase "belief of the Arab nations in the Arab Charter on Human Rights of 2004, almost contemporary to the Charter of Fundamental Rights of the European Union (CFREU), constitutes a significant regional instrument in the field of human rights, particularly because of the central place it gives to human dignity. This value is not limited to a mere ethical declaration, but is established as a

fundamental legal principle, widely recognized and protected throughout the text.

From the preamble, human dignity is presented as a supreme value, proclaiming the *"belief of the Arab nations in human dignity, as God honoured it by making the Arab world the cradle of religions and the birthplace of civilizations, which confirms the right to a dignified life"*. This formulation not only establishes a moral commitment but also places dignity at the centre of the legal framework of the instrument.

Throughout its articles, dignity repeatedly appears, linked to various rights and principles, which reinforces its transversal nature:

- In Article 2.3, racism is condemned as being contrary to human dignity.
- In Article 3.3, dignity is associated with the principle of equality between men and women, consolidating its anti-discriminatory dimension.
- In Article 17, a special legal treatment is established for juvenile offenders, with attention to the protection of their dignity.
- Article 20 guarantees the respect for the dignity of persons deprived of their liberty, prohibiting degrading treatment.
- In Article 33, dignity is linked to the realm of family

relations, particularly concerning the custody of minors.

- Finally, Article 40 imposes on states the obligation to ensure that persons with physical or mental disabilities live a decent life, under conditions that allow them to enjoy their dignity.

It is worth noting, however, that personal integrity is not explicitly mentioned in the text, which constitutes a notable gap compared to other regional instruments that recognize both dimensions — dignity and integrity — in a joint and complementary manner. Nevertheless, taken as a whole, the Arab Charter on Human Rights offers a broad and materially solid approach to the protection of human dignity, by integrating it into multiple areas particularly sensitive to its violation. This comprehensive approach makes the Charter a normative instrument of special relevance in the regional development of international human rights law.

Once an examination is made of the place that human dignity and integrity occupy in international and regional protection systems, as fundamental principles subject to legal protection, it becomes clear that these notions serve as insurmountable boundaries against potential manifestations of authoritarianism, including those arising in the healthcare sector.

In the following sections, the interrelationship between these

fundamental rights and healthcare policies will be analysed, not only as barriers against potential abuses of power but also as structural pillars of a renewed healthcare culture, focused on a person-centred approach.

The objective of this analysis is to determine the extent to which the dignity and integrity of the patient have been explicitly recognized in legal instruments, as well as to verify the existence of effective mechanisms for their guarantee, both at the international and regional levels, with special attention to the Charter of Fundamental Rights of the European Union (CFREU).

## The protection of dignity and integrity in the healthcare sector: Analysis of international and regional instruments with special reference to the Charter of Fundamental Rights of the European Union

At the international level, unlike other areas such as the protection of children or persons with disabilities — which have specific international instruments, such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities — there is no universal and comprehensive treaty dedicated solely to the rights of patients. However, in the European regional context, the Convention for the Protection of

Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention, 1997) stands out, which represents the main binding legal instrument in this area.

Beyond this regional framework, references to dignity and integrity in the healthcare context within classic human rights treaties often appear indirectly, fragmentarily, or limited, without a systematization that grants the patient a fully developed legal status at the international level. Thus, the International Covenant on Civil and Political Rights (ICCPR, 1966), in its Article 7, explicitly establishes the prohibition of subjecting a person to medical or scientific experiments without their free and informed consent.

The Convention on the Rights of Persons with Disabilities (2006), in its Article 17, expressly recognizes that “every person with a disability has the right to respect for their physical and mental integrity on an equal basis with others”. Similarly, in the area of protection for older persons, the United Nations General Assembly, through its Resolution 46/91 of December 16, 1991, adopted the United Nations Principles for Older Persons, urging states to incorporate them into their national programs as far as possible.

Within these principles, there is an explicit reference to the

dignity and integrity of this group in the healthcare context, stating that older persons should be able to “enjoy their human rights and fundamental freedoms when residing in homes or institutions where care or treatment is provided, with full respect for their dignity, beliefs, needs, and privacy, as well as their right to make decisions about their care and the quality of their life” (United Nations, 2025).

The lack of an explicit and harmonized international recognition of patient rights, with dignity and integrity as fundamental pillars, leads to various legal implications that directly affect their legal status in the healthcare sector, potentially resulting in:

- A significant lack of protection for the patient, undermining the effectiveness of safeguarding their dignity, integrity, and autonomy. The absence of clear and specific international regulations addressing these rights may lead to situations where patients are exposed to medical, political, or scientific practices that undermine their autonomy or subject them to conditions of undignified or inhuman treatment, without effective protection mechanisms.
- In terms of physical integrity, this international lack of protection could lead to medical treatments or procedures being performed without proper consent, lack of access to

a minimum level of healthcare, or inadequate hygiene and safety conditions in hospitals and healthcare institutions. Moral integrity, on the other hand, could be compromised if the patient's religious, cultural, or ideological beliefs are not respected during the care process, which could have a negative impact on their psychological and emotional well-being.

- Moreover, the patient’s autonomy could be severely affected if there is no regulatory framework ensuring their right to make informed decisions about their own care and treatment. This could lead to a scenario where the patient is treated as a passive subject, with no capacity to decide about their health or well-being, reinforcing an unequal relationship between the healthcare professional and the patient. Ultimately, the lack of specific regulation regarding patient rights in the healthcare context, combined with fragmented regulations, leaves patients in a vulnerable position facing potential abuses or neglect, undermining the respect for their dignity and personal integrity.
- A significant legal insecurity. This insecurity arises largely because the international instruments do not clearly outline exactly what the patient’s rights consist of or how they

should be implemented in the healthcare context. This regulatory ambiguity creates an environment where the fundamental rights of patients may be interpreted inconsistently or even overlooked by healthcare providers, without a clear legal framework to guide their effective implementation.

The lack of protection resulting from this lack of clarity is reflected in the difficulty patients face in claiming their rights and obtaining effective redress in the event of a violation of those rights. For example, without a clear definition of what the right to physical or moral integrity entails in a healthcare context, the patient may not be aware that these rights are being violated. Moreover, the patient's autonomy could also be compromised if there is no explicit regulation regarding the right to decide on their own treatment or to receive clear and understandable information about their health status and available treatment options.

On the other hand, legal insecurity may result in healthcare professionals or medical institutions not knowing exactly how to fulfill their legal and ethical responsibilities regarding patient rights. The lack of precise regulations on how to respect the dignity and autonomy of patients may lead to the adoption of practices that, although not necessarily abusive, could fail to

adequately respect the fundamental rights of the patient. Similarly, the absence of clear guidelines on the protection of personal integrity can lead to differences in the quality of care, depending on the healthcare providers' interpretation of what constitutes these rights.

Legal insecurity also affects patients' access to effective protection and redress mechanisms. If patient rights are not clearly specified in regulations, it may be difficult for affected individuals to access justice or seek legal remedies when their rights have been violated. This regulatory gap hinders the implementation of appropriate control and oversight mechanisms, which in turn undermines patients' trust in the healthcare system.

At the regional level, as outlined in the previous section, the American Convention on Human Rights (ACHR) was pioneering in recognizing human dignity and personal integrity as autonomous rights. This approach goes beyond its interpretative function and its connection to other human rights, unlike in Europe, where the European Court of Human Rights (ECHR) has developed its relationship with the prohibition of torture and inhuman or degrading treatment within the framework of the European Convention on Human Rights (ECHR). Although the interpretation of these rights has evolved, especially in relation to

health and well-being, neither of the two conventions explicitly mentions the dignity and integrity of the patient in the healthcare context. However, both the Inter-American Court of Human Rights (IACHR) and the ECHR have addressed their interrelation through jurisprudence.

In the case of the IACHR, this connection is more accessible, given that the American Convention on Human Rights (ACHR) explicitly recognizes both dignity and personal integrity in a broad sense, which has allowed the Inter-American Court to link these rights more directly with the healthcare sector. The *Poblete Vilches and Others v. Chile* case (2018) is focused on the medical care provided to Vinicio Poblete Vilches, an elderly man who died after being discharged under questionable conditions. The IACHR determined that the Chilean state violated the rights to life, dignity, personal integrity, self-determination, and health of Mr. Poblete Vilches, emphasizing the state's obligation to guarantee adequate and accessible healthcare services, especially for individuals in vulnerable situations (Corte Interamericana de Derechos Humanos, 2018).

On the other hand, in the case of the ECHR, a dual interpretative effort is required: first, the identification of dignity and human integrity as protectable rights within the framework of the European Convention on Human Rights (ECHR), as they are not

explicitly stated; and second, the construction of their relationship with the healthcare dimension. This jurisprudential evolution is reflected in decisions such as *Pentiacova and Others v. Moldova* (ECHR, 2005): The Court analysed the lack of access to adequate medical treatments (hemodialysis) as a potential violation of personal integrity (Tribunal Europeo de Derechos Humanos, 2005).

Neither the African Charter nor the Arab Charter on Human Rights expressly refers to these rights in their healthcare dimension. However, their general provisions on human dignity, physical integrity, and the right to health can be interpreted as a basis for the implicit recognition of these rights in the healthcare sector, even though they are not specifically mentioned in those terms. To date, the African Court on Human and Peoples' Rights (AfCHPR) has not issued rulings specifically focused on patient integrity in a healthcare context. However, it has addressed cases that touch on issues of physical integrity, cruel or inhuman treatments, and the right to health, which are elements indirectly related to patient integrity.

A relevant example is the *Centre for Human Rights and Others v. United Republic of Tanzania* case (Application No. 019/2018), in which violations of the rights of people with albinism in Tanzania were alleged, including attacks, killings, and mutilations due to

inadequate state protection. Although it did not focus exclusively on healthcare, the court addressed the state's obligation to guarantee the right to health and dignity of these individuals, ordering specific measures to protect their rights.

In the case of the Arab Court of Human Rights, it has not issued rulings directly related to the dignity and integrity of the patient in the healthcare context. This court, being a relatively recent regional body with jurisprudence still under development, has not explicitly addressed this issue in its decisions.

In Europe, in addition to the interpretive work of the European Court of Human Rights (ECHR) in linking the dignity and integrity of the person with the healthcare field, two pioneering and highly significant normative milestones stand out, unlike in the international context and other regions, in the protection of the patient's dignity and integrity: the 1997 Oviedo Convention and, more recently, the Charter of Fundamental Rights of the European Union (CFREU).

In a detailed and specific manner, the Oviedo Convention, formally known as the Convention on Human Rights and Biomedicine, adopted in Oviedo, Spain, in 1997 under the auspices of the Council of Europe, recognizes and protects human rights and the dignity of individuals in the field of biological and medical sciences, with a particular focus on the

physical and mental integrity of individuals, and the protection of patients' rights in medical and biological contexts.

In this sense, it constitutes the most comprehensive regulatory instrument worldwide in this field, being a pioneer in integrating the human rights approach into the field of biomedicine. However, the convention faces various legal and practical challenges, both regarding its interpretation and uniform application, as well as its ratification: not even all the European Union Member States have ratified it, despite it being open to all member states of the Council of Europe.

Furthermore, the original text did not address certain scientific advances that have emerged in recent decades, such as genetic editing (e.g., CRISPR technology), genomic research or artificial intelligence applied to medicine, which has created regulatory gaps regarding its ethical and legal regulation. As biomedical science continues to evolve, it is foreseeable that new challenges will arise regarding the updating, applicability, and sufficiency of its provisions in a globalized and technologically advanced context.

Finally, one of the most significant issues of the Convention is the absence of an international mechanism for supervision and enforcement. While it establishes a solid regulatory framework, it lacks a centralized authority to ensure its effective

implementation, meaning that the contracting states could fail to meet their obligations without facing clear legal consequences or sanctions for potential violations.

With regard to the Charter of Fundamental Rights of the European Union (CFREU), while it is not an instrument specifically focused on the healthcare field, it pioneeringly incorporates a series of fundamental rights directly linked to that domain. In particular, Article 3 recognizes the right to personal integrity and, in its second paragraph, establishes an explicit connection with the fields of medicine and biology, outlining the respect for this integrity within the context of medical and scientific practices. This represents a significant advancement, as the integrity of the individual — particularly the patient as the subject of healthcare norms and policies — is enshrined as a fundamental right. This guarantee is articulated through a set of specific prerogatives, such as the recognition of the free and informed consent of the affected person, in accordance with legally established modalities; the prohibition of eugenic practices, especially those aimed at the selection of individuals; the prohibition of human bodies or their parts being used for profit; and the prohibition of reproductive cloning of human beings.

It is important to remember that the Charter of Fundamental

Rights of the European Union is a community instrument of primary law, as the Lisbon Treaty granted it the same legal value as the founding treaties. Consequently, both the institutions of the European Union and the member states are bound to comply with it within the scope of Union law. It is, therefore, an especially valuable instrument for member states in the healthcare field, as it establishes a minimum and unavoidable threshold for the protection of fundamental rights in this domain. Although its content does not reach the breadth of the Oviedo Convention in terms of the detailed regulation of rights within the biomedical context, its application extends uniformly to all 27 EU Member States. Furthermore, unlike the aforementioned Convention, which lacks a specific judicial body to ensure its enforcement, the Charter is supported by the Court of Justice of the European Union (CJEU), which has the competence to interpret it and enforce it both against acts of the European institutions and in cases where member states apply Union law.

In the context of the jurisprudence of the Court of Justice of the European Union (CJEU), Article 3 of the Charter of Fundamental Rights of the European Union — concerning the right to personal integrity — has been interpreted in various contexts, some of which have relevant, albeit indirect, implications in the healthcare field. Among the five cases in which this provision has

been expressly cited, the opinion issued in the joined cases C-148/13, C-149/13, and C-150/13 (“A, B, and C”) is particularly noteworthy, as it addressed the compatibility of certain medical practices used in the asylum application process, aimed at determining the sexual orientation of the applicant, with Article 3 of the Charter.

In that opinion, it was emphasized that, since homosexuality is not a medical condition, any medical examination intended to determine it cannot be considered compatible with Article 3 of the Charter. Furthermore, it was held that the applicant’s consent to such examinations does not remedy the violation of their right to personal integrity. It was also considered that explicit questions about the applicant’s sexual activities inherently violate the integrity of the person, as protected under Article 3(1) of the Charter, as well as their private life, safeguarded under Article 7 of the Charter.

This case constitutes a relevant reference in the healthcare field, as it sets clear limits on medical or pseudo-medical interventions when they compromise dignity and personal integrity without legitimate medical justification. In this way, the CJEU reinforces the principle that the physical and psychological integrity of individuals cannot be subject to arbitrary interference, even when such actions are disguised under apparent medical or

administrative purposes.

## Conclusions

Healthcare authoritarianism, in its medical, scientific, and political dimensions, represents a significant risk to human dignity, personal integrity, and the proper functioning of democratic societies. The imposition of medical practices without respect for the patient's integrity and dignity, the unquestionable sacralisation of scientific knowledge, and the adoption of health policies without adequate rational justification undermine essential principles of humanism and the democratic rule of law.

In the face of these risks, it is essential to strengthen a health culture that values dialogue, mutual respect, scientific critique, and the ethical grounding of public decisions. Only through respectful medical practice, science open to debate, and transparent, well-reasoned health policy can we avoid the consolidation of authoritarian dynamics in the health sphere and protect the fundamental values that uphold truly humane care.

Healthcare humanism emerges as the strongest response to the risk of health authoritarianism in its various forms. Promoting a political, medical, and scientific approach centred on human

dignity means not only recognizing health as a complex and multidimensional phenomenon, but also placing the individual at the heart of all health-related decisions and actions. Only by fully respecting the autonomy, integrity, and rights of each person can we build a truly fair, inclusive, and respectful healthcare system.

The experience of the COVID-19 pandemic revealed that even in well-established democracies, authoritarian practices can emerge within the healthcare sphere—highlighting the urgent need to strengthen humanist models that protect democratic principles and fundamental rights, even in times of crisis. Health humanism, by integrating science with the humanities and promoting horizontal relationships between professionals and patients, offers a path to prevent dehumanization and abuses of power within the healthcare system. Strengthening this approach is not only an ethical imperative but also an essential safeguard for protecting the freedom, equity, and dignity of all individuals.

Human dignity and personal integrity are the essential pillars upon which the protection of human rights is built at both international and regional levels. Despite the diversity of legal frameworks and cultural approaches, there is a broad consensus regarding the recognition of dignity as an intrinsic and inalienable value of every human being—the ultimate foundation of all fundamental rights and freedoms. A review of international

legal instruments, such as the Universal Declaration of Human Rights and the International Covenants, as well as regional protection systems—particularly the American Convention on Human Rights, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union—reveals the central role of human dignity in the construction and implementation of fundamental rights.

Although approaches may vary, dignity consistently emerges as an interpretative principle that guides the evolution of law toward greater humanization, particularly in the protection of vulnerable groups. The jurisprudential work of the European Court of Human Rights, the Inter-American Court of Human Rights, and the Court of Justice of the European Union has been crucial in consolidating respect for human dignity as a guiding criterion in the interpretation of fundamental rights, enabling a dynamic and progressive development of protection standards.

In the healthcare context, the reaffirmation of dignity and personal integrity takes on special significance, as it forms the foundation of person-centred care—care that respects the individual's intrinsic worth, autonomy, and fundamental rights. Thus, the humanization of healthcare cannot be understood without the full recognition and effective protection of human dignity, whose respect must guide all regulatory, institutional,

and professional actions in the field of health.

The evolution of comparative law shows that while some instruments—such as the African Charter on Human and Peoples' Rights—explicitly incorporated both values from the outset, other systems, such as the European one, have required progressive development through case law to affirm their centrality. Likewise, recent jurisprudence from the Court of Justice of the European Union, such as in case C-247/23, reaffirms the need to respect the dignity and integrity of individuals, especially in sensitive contexts such as gender identity, where essential rights to private life and personal development are protected.

In particular, the Charter of Fundamental Rights of the European Union explicitly establishes human dignity and personal integrity as non-negotiable cores of the legal order, becoming a reference point for the formulation of public policies, including those related to health. This perspective promotes a renewed vision of healthcare, in which the individual—recognized in their uniqueness and autonomy—is seen as a subject of rights, not merely as an object of intervention. Thus, human dignity and integrity function not only as guiding principles and interpretative criteria for fundamental rights, but also as true structural pillars of a new model of health governance, centred on

the unconditional respect for the human person.

Ultimately, the Charter of Fundamental Rights of the European Union (CFR) and the jurisprudence of the Court of Justice of the European Union (CJEU) are essential for the protection of the dignity and integrity of patients in Europe. The Charter of Fundamental Rights of the European Union (CFR), which came into force following the Treaty of Lisbon in 2009, represents a crucial step forward by enshrining human dignity and physical integrity as fundamental rights. Article 3 of the CFR states that medical interventions must respect these principles, ensuring that consent is given freely and with full information.

The jurisprudence of the CJEU has been crucial in interpreting and applying this right. In several cases, such as the Joined Cases C-148/13, C-149/13, and C-150/13 (“A, B and C”), the CJEU has emphasized that invasive medical procedures that compromise the integrity of individuals cannot be justified, even with consent. These decisions highlight that the integrity of individuals must not be violated for medical or administrative reasons and reaffirm the importance of human dignity in healthcare practice. The CJEU plays a key role in ensuring that member states apply these principles consistently, thereby protecting the rights of patients.

Despite the advancements represented by the CFR and the decisions of the CJEU, a broader approach is needed to address

other aspects of the right to health, such as adequate access to medical care and protection against negligence or inhumane treatment. In this regard, the CFR and the jurisprudence of the CJEU remain key instruments for the development of a just health governance model, focused on the dignity and autonomy of patients, ensuring that Europe continues to serve as a benchmark in the protection of human rights in healthcare.

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# Some dysfunctions in the Spanish legal system of European integration through the EU Charter of Fundamental Rights: the fundamental rights of equality, non-discrimination and protection of personal data

Doi: 10.5281/zenodo.16527659

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## Introduction

The aim of the study is to analyse some of the dysfunctions observed in the Spanish legal system in European integration through the EU Charter of Fundamental Rights (hereinafter EUCFR) in relation to the fundamental rights of equality and non-discrimination (Articles 20 and 21 EUCFR), as well as the

protection of personal data (Article 8 EUCFR).[1] The analysis focuses on these fundamental rights because, in my opinion, they are the best examples of the intense integration between the Spanish legal system and the EU legal system.

In terms of the structure of this study, firstly, I briefly address the phenomenon of European integration through the EUCFR; secondly, I analyse the maximum irradiation of the EUCFR through the fundamental rights to equality and non-discrimination in matters such as public employment, gender equality on the boards of commercial companies and respect for equality in the discretionary appointments of the General Council of the Judiciary; and finally, thirdly, the paper refers to the fundamental right to the protection of personal data, as well as the obligations that Regulation (EU) 2016/679 of the European

[1]This work is carried out within the framework of the research project titled "La aplicación eficaz de la Carta de Derechos Fundamentales de la Unión Europea: el respeto de los principios y valores constitucionales", State Programme to Promote Scientific-Technical Research and its Transfer, of the State Plan for Scientific, Technical Research and Innovation 2021-2023, REF: PID2021-128335OB-100, Universitat Pompeu Fabra CCT, IP Santiago Ripol Carulla. The study stems from the lecture given at the University of the Basque Country's summer course entitled: "De la función legislativa de los parlamentos a la función ejecutiva de las administraciones públicas: un salto cualitativo en la aplicación de la CDFUE", directed by Maite Zelaia Garagarza and Santiago Ripol Carulla, 8 and 9 July 2024.

Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, (hereinafter GDPR), imposes on public administrations and the unequal compliance with these obligations by the public sector.

**The Charter as an engine of European integration**

The EUCFR has been defined as an engine of European integration. In this respect, it is worth recalling the statement of the president of the CJEU, Koen Lenaerts (2020), who declared that:

*"The entry into force of the Charter as a source of primary Union Law is one of the most important achievements in the history of European integration. It shows that the European integration project is more than an internal market. The EU is, first and foremost, a union of democracies, a union of justice, a union of rights and values which draws on the constitutional traditions common to the Member States*".

In this sense, Michael O'Flaherty (2020), then President of the European Human Rights Agency, added, paraphrasing Article 1 of the EUCFR, that the recognition of the Charter as a primary

right, at the same level as the Treaties, ‘puts the defence of human dignity at the heart of the Union’.

This is because, through the fundamental rights recognised therein, as well as the case law of the CJEU, which bind the Member States when applying EU law (ex Art. 52 EUCFR), it is bringing about substantial changes in the national legal systems of the Member States (Ripol Carulla, Ugartemendía Uceizabarrena, 2020).

As far as this study is concerned, the transformation of our legal system as a result of the fundamental rights to equality and non-discrimination, as well as the right to the protection of personal data, is very striking. In the area of equality, the case law of the CJEU has modified the constitutional doctrine on Art. 14 EC, which can no longer be applied without taking into account the pronouncements of the CJEU and the EUCFR.

Originally, the constitutional doctrine on the fundamental right to equality allowed for different treatment in the case of different factual circumstances. However, in matters of public or private employment, this interpretation of the right to equality is no longer possible, because this has been declared by the CJEU of 13 September 2007, Case C-307/05, Cerro Alonso; and of 22 December 2010, Case C-444/09, Gavieiro Gavieiro and Iglesias Torres, both on the recognition of three years of service to

interim civil servants; as well as the Order of the CJEU of 9 February 2012, C- 556/11, case Lorenzo Martínez on the recognition of six years of service to temporary teachers; Order of 18 March 2011, C- 273/2010, Montoya Medina; and STJUE of 8 September 2011, C- 177/10, case Rosado Santana. STC 232/2015, of 5 November, granted protection to a public secondary school teacher who requested the recognition of a six-year (training) period despite being an interim teacher.

The education administration rejected their request on the grounds that the six-year period for secondary school teachers was intended exclusively as a salary supplement for career civil servants, not for interim teachers or staff on an employment contract.

The ordinary courts upheld the administrative decisions, applying the constitutional doctrine on the fundamental right to equality. However, in order to grant the protection requested, the Constitutional Court had to modify its doctrine in order to accept the case law of the CJEU by application of the principle of the primacy of the EU, since under the classic constitutional doctrine on the fundamental right to equality (there is no infringement of the principle of equality by granting different treatment to different factual circumstances), the appellant would not have been protected.

The integration of legal systems as a result of the fundamental right to the protection of personal data is also very intense. Since the adoption of Directive 95/46/EC, the case law of the CJEU has had a profound impact on all national legal systems. Although, in my opinion, the most interesting aspect has not only been the transformation of the Spanish legal system as a result of the case law of the CJEU on the fundamental right to data protection, but also the resolution by the CJEU of conflicts between the aforementioned fundamental right and the fundamental right of access to documents (Art. 42 EUCFR).

A permanent conflict that, in our legal system, is usually resolved, generally without justification, in favour of the fundamental right to the protection of personal data. So much so that, if the current trend continues, not only is the effectiveness of the fundamental right of access to documents and the principle of transparency at risk, but also the effectiveness of the right of defence in legal proceedings.

The integration of national legal systems with EU law brought about by the fundamental right to the protection of personal data has accelerated substantially with the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter referred to as the GDPR). The very broad objective and subjective scope of the GDPR, as

well as the profound changes introduced in the personal data protection model, was a determining factor in the two-year vacatio legis period adopted by the European legislator, as the GDPR required a significant effort of adaptation from companies, professionals and public administrations, which could not be carried out in a short period of time.

**Integration through the fundamental rights to equality and non-discrimination: some black holes**

As is well known, the principle of non-discrimination on grounds of nationality is a fundamental principle for the creation and development of the European project, from the adoption of the 1957 Treaty of Rome to the current 2009 Treaty of Lisbon. In the years since the beginning of the European Communities until today, the principle has been developed by the case law of the Court of Justice of the EU and taken up in the reforms of the Treaties: on the one hand, by extending the prohibited discriminatory grounds and, on the other hand, by considering it not only as a principle, but also as a fundamental right (Articles 20 and 21 EUCFR).

Integration through the fundamental rights to equality and non-discrimination is seen with extraordinary force in areas such as public and private employment, mainly, but not only, through

Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP; in gender equality in public and private positions, including the equal presence of women on boards of directors of commercial companies (Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2023 on a better gender balance among directors of listed companies and related measures, known as the Women in Boards Directive); as well as in the discretionary appointments of judges by the General Council of the Judiciary (hereinafter referred to as the GCJ).

This section shows the profound changes that the case law of the CJEU has produced in our legal system when applying and interpreting the fundamental rights to equality and non-discrimination, recognised and regulated by EU law. It also shows, especially in the area of discretionary appointments of judges by the GCJ, the lack of permeability of this area to the case law of the CJEU.

This is followed by an explanation of how the European norms and the case law of the CJEU interpreting them have brought about a profound change in the Spanish legal system in the area of equality and non-discrimination with the three examples mentioned above, which do not exhaust the phenomenon of

integration through the fundamental right to equality in Articles 20 and 21 of the CFREU, but which give an idea of the deep imprint produced in the Spanish legal system and some of the problems that have not yet been resolved.

**Public employment**

In reality, public and private employment is the area most affected by the transformations imposed by the case law of the CJEU in the interpretation of the right to equality, as well as previously in the interpretation of the right to non-discrimination on grounds of nationality with its irradiation and inclusion of other proscribed grounds (sex, ideology, religion, opinion, among others).

Numerous rulings have been made by the CJEU in this area, which has been the subject of abundant studies in the field of private and public employment (Suárez Corujo, 2017, Nieto, 2019; Gordillo, 2021).

For this reason, this paper only focuses on public employment and, in particular, on the recent stabilisation processes for interim workers in public administrations, specifically, on the stabilisation processes for specialist doctors in the public health system of the Community of Madrid, which serves to focus on

the deficient application of the rights recognised in the EUCFR (Articles 20 and 21).

It is precisely the EU that has promoted the appropriate reforms in our country to put an end to the indecent abuse of interim workers by public administrations. This is because the receipt of Next Generation funds by our country has been made conditional on the reduction of the number of interim workers. Indeed, the Recovery, Transformation and Resilience Plan was favourably assessed by the European Commission in its Proposal for an Implementing Decision to the Council. The Council Decision of 16 June 2021 confirmed the favourable assessment of the aforementioned Plan, because among other measures it refers, in its component 11, on the modernisation of public administration, to the reduction of the temporary nature of public employment.[2]

Law 20/2021, of 28 December, on urgent measures to reduce the temporary nature of public employment, highlights in its explanatory memorandum that the temporary nature of public employment has reached 30% of public employment, in some sectors 50%, despite the fact that the legislator, in successive regulations, established very clear limits for the appointment of interim civil servants or temporary labour staff reserved for

[2]Proposal for a Council Implementing Decision on the approval of the evaluation of the Spanish recovery and resilience plan, prepared by the European Commission as COM document (2021)322 final.

exceptional cases of unquestionable and strict necessity. These appointments were to be made for the time necessary until they were filled by career civil servants. However, how has it been possible to reach 30% of interim appointments? Interim staff who have been prolonged for years, even being in this situation for more than ten or fifteen years, which has meant that the use of temporary staff by public administrations has been considered structural and not exceptional, as envisaged by the national legislator.

The preamble of Law 20/2021, of 28 December, previously mentioned, attributes the abuse of the use of interim workers to various factors: firstly, budgetary factors, because the budget laws of recent decades have imposed restrictions on the provision of new posts for staff in the service of public administrations with the aim of containing public spending, which has also prevented the necessary replacement of staff caused by departures of permanent staff, whether civil servants or employees.

All this has led to a dissonance between the staffing needs in important public services, such as education, health and social services, and the real capacity of public administrations to meet these needs; secondly, in accordance with Law 20/2021, there has been a lack of strategic planning for public employment, which

has led to a lack of regular calls for public employment, together with the slowness of selection processes.

The measures adopted by Law 20/2021 of 28 December aim to reduce temporary employment to 8% in Spanish public administrations as a whole. The law strengthens the temporary nature of interim staff, clarifies the procedures for access to interim status and, in addition, introduces a system of responsibilities as a deterrent to future non-compliance.

However, in my opinion, the application of Law 20/2021, of 28 December, by the various public administrations does not comply in some cases with the objective set out in the law, namely that the reduction of interim or temporary staff in public administrations should be done with respect for the constitutional principles governing access to public employment, i.e. the fundamental right to equality in access to public functions with respect for the principles of merit and ability (ex Art. 23.2 EC). The fundamental right recognised by Art. 23.2 EC applies in these cases because it is the specific fundamental right in the field of public employment, taking precedence over the fundamental right to equality recognised by Art. 14 EC.

**Case of non-compliance**

An example of non-compliance can be found, among other public employment stabilisation resolutions in the Autonomous Communities, in the Resolution of 5 December 2022, of 5 December 2022, of the Directorate General of Human Resources and Labour Relations of the Madrid Health Service, which announced a merit-based competition for access to the status of permanent statutory staff (civil servant) of specialist doctors in the Community of Madrid. The scale of merits relating to professional experience does not, in my view, comply with the right to equal access to public service (Article 23.2 of the Spanish Constitution), because it discriminates against those professionals who have provided services in public hospitals in the Community of Madrid, but under private management, in comparison with those professionals who have provided services in public hospitals under public management in the Community of Madrid.[3]

[3]The hospital network in the Madrid region has traditionally consisted of public hospitals managed by the public administration. However, at the beginning of the 21st century, the regional government of Esperanza Aguirre decided to create hospitals under administrative concession, in which the private investors who built the hospital, whose ownership corresponded to the Community of Madrid, retained the operation and management of the hospital. These are privately run public hospitals providing specialist

This was because the professional experience of those specialist doctors was not included in the merit scale, it counted zero points according to the aforementioned Resolution of 5 December 2022, unlike the professional experience of the specialist doctors of the traditional hospitals of the Community of Madrid. This introduced such a difference in the merit scale that it could not be justified by any objective reason. Hence, the discriminated professionals decided to go to court for infringement of the fundamental right to equality and non-discrimination.

In other words, a procedure that was initiated at the request of the European Union, which reproached Spain for the high rate of temporary employment of public employees, due to the differences in terms of professional career and other benefits, including economic ones, that this entailed, has ended up being interpreted by the Community of Madrid in a way that discriminates and infringes the right to equality more than the previous system in which probably more than 50% of specialist doctors were not assured continuity in the autonomous health system after many years of service.

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medical services to the territorial areas of the Region of Madrid, where patients are treated in exactly the same way as in traditional public hospitals. For example, privately owned public hospitals are: Hospital Universitario de Villalba, Hospital Rey Juan Carlos de Móstoles, Hospital de Valdemoro, and others.

The stabilisation of medical professionals in question does not comply with EU law: one, because the temporary nature of public employment cannot be reduced, in accordance with the provisions of Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP and the case law of the CJEU, at the cost of infringing the fundamental right to equality and non-discrimination; and two, because the EUCFR recognises the fundamental right to equality of all persons before the law, which also implies equality in the application of the law (Art. 20 CFREU), as well as the prohibition of all discrimination, i.e. on any grounds other than those listed in the same provision; and, in particular, on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (Art. 21 CFREU).

**Reaction of the judiciary**

The courts are reacting to the infringement of the fundamental rights of applicants caused by the application of the aforementioned merit scales in the stabilisation processes.[4]

[4]In this regard, the Judgment of the Contentious-Administrative Court No.

STS no. 4697/2024, of 26 September 2024, (rec. 6920/2023), of the Contentious-Administrative Chamber, Section 4, Judge Pablo María Lucas Murillo de la Cueva, rejected the cassation appeal lodged by the Galician Health Service (SERGAS), against Judgment no. 508/2023, of 14 June, of the First Section of the Contentious-Administrative Chamber of the High Court of Justice of Galicia.

The latter upheld the contentious-administrative appeal brought by the plaintiff against the Resolution of the Directorate General of Human Resources of the Galician Health Service of 26 December 2022, which made the exceptional call for the

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29 of Madrid, abbreviated procedure 419/2023 N, of 4 March 2024, which upheld the contentious-administrative appeal of two professionals who worked in indirectly managed health centres, such as hospitals or comprehensive care centres for drug addiction, stands out, integrated into the National Health System, against the merit scale of the Resolution of 25 April 2023, of the Deputy Minister for Economic Management of the Community of Madrid, because in the section on professional experience, only professional experience in the Madrid health system, public centres under public ownership and management, was taken into account. The appeal was upheld on the grounds that there was no justification for the difference in the assessment of merits between professionals performing the same duties, with reference to the infringement of the fundamental right to equal access to public service, and that those centres were linked to the Madrid health service.

selective process of stabilisation, under the provisions of Law 20/2021, by the merit-based competition system for entry into various specialities of specialist practitioner, on considering that the scale of merits relating to professional experience infringed the appellant's fundamental right to equal access to public functions (ex Art. 23.2 EC) and that it was in breach of his fundamental right to equal access to public functions (ex Art. 23.2 EC).

In particular, the STSJ of Galicia annulled the merit scale insofar as it assigned 0.20 points/month for services rendered exclusively as temporary statutory personnel in the same category and speciality or equivalent category approved by and under the responsibility of the institutions of the Public Health System of Galicia, because it awarded 0.10 points/month for services rendered as temporary statutory personnel in the same category and speciality or equivalent category approved by and under the responsibility of health institutions of the public health system of other health services of the National Health System. The difference in assessment was declared disproportionate and detrimental to the appellant's fundamental right to equal access to public service under art. 23.2 EC.

The Supreme Court upheld the aforementioned Judgment of the TSJ of Galicia and declared that:

*"The lack of justification of the highest score for services rendered in the Autonomous Community calling a stabilisation process derived from the provision of Article 2.4 and the sixth additional provision of Law 20/2021, of 28 December, on urgent measures for the reduction of temporary employment breaks the principle of equality and free competition*".

Therefore, in the coming years we will see many rulings by the High Courts of Justice declaring the infringement of the principles of equality and free competition by the Spanish public administrations, contrary to the provisions of the Spanish Constitution (Articles 23.2 and 14) and the EUCFR (Article 20). And this, despite the fact that the ultimate aim is driven by the EU to ensure compliance with secondary legislation, specifically, the Fixed-Term Employment Directive and the Framework Agreement.

**Non-discrimination on grounds of gender in public and private positions**

In addition to public employment, another of the sectors in which the fundamental right to equality is being a driving force for European integration is equality, and therefore non-discrimination, on the grounds of gender (Art. 21 and 23

EUCFR).

We already noted that gender equality is still a goal to be achieved, i.e. it is a work in progress, but the latest piece of EU legislation, Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2023 on a better gender balance among directors of listed companies and related measures, known as the Women in Boards Directive, is worth highlighting in this study because it represents a historic milestone to accelerate the incorporation of women on the boards of European listed companies.

Spain has transposed the Women in Boards Directive by means of Organic Law 2/2024 of 1 August on equal representation and balanced presence of women and men, which amends other national legislation in order to comply with the provisions of the directive.

The reform introduced by Organic Law 2/2024 is much needed. The previous soft law measures, the preference for the appointment of women when there is equality of merit among the candidates ex art. 16 of Organic Law 3/2007, have not prevented that, in the sphere of the judiciary, the appointments of presidents of the High Courts of Justice, chambers of these courts, chambers of the National High Court, among others, have postponed female candidates with equal or superior merits to candidates

who have been chosen by the GCJ in the exercise of the discretion it enjoys in making these appointments (Ovejero Puente, 2009).

These elections have been confirmed by the Third Chamber of the Supreme Court. Very significant is the STS of 30 May 2022, nº 2219/2022, which confirmed the Agreement of the Plenary of the General Council of the Judiciary of 17 December 2020, which appointed a candidate as President of the Social Chamber of the National High Court, among 3 candidates presented, one of them a woman, with similar merits, according to the Report of the Permanent Commission in functions of qualification of the GCJ, which summarises the sentence, FD 6, pages 8 and 9, which recommended the appointment of the President of the Social Chamber of the National High Court. 8 and 9, which recommended the appointment of the female candidate. And this, despite the fact that Article 326.2 of the Organic Law of the Judiciary (LOPJ) stipulates that, for the assignment of positions within the judicial career, the proposal must include "an assessment of its alignment with the provisions of Organic Law 3/2007, of March 22, on the effective equality of women and men".

The Supreme Court ruling (STS) was based on an overall assessment of the candidates' merits, as reflected in the final vote

(1 vote in favor of the female candidate, 17 in favor of the male candidate who was ultimately selected, and 3 blank votes). In my view, this vote disregards the preference mandated by the Organic Law on Equality between Women and Men, as well as the commitment undertaken by the General Council of the Judiciary (GCJ)—not to mention the jurisprudence of the Constitutional Court or the case law of the Court of Justice of the European Union (CJEU). This preference was also explicitly included in the terms of the call for applications.

In addition, Organic Law 2/2024 of August 1 mandates not only that publicly traded companies ensure balanced gender representation on their boards of directors (with at least 40% representation of the underrepresented sex), but also that this balance extends to senior management positions.

The reform of Article 529 bis of the Capital Companies Act is also accompanied by the introduction of a sanctioning regime for companies that fail to meet gender balance requirements on their boards or in senior management roles. This regime is established through the amendment of Article 292 of Law 6/2023 of March 17, which sets out the penalties to be imposed.

The advances in gender parity introduced by Organic Law 2/2024 of August 1 are not limited to requiring balanced representation on the boards of directors of the country’s most

important capital companies, nor solely to ensuring balanced representation in constitutional bodies. The law's objectives also extend to other entities, such as professional associations, public bodies like national radio and television, and foundations, etc.[5]

However, for the purposes of this paper, the conclusion reached after analyzing Organic Law 2/2024 of August 1 is that, despite the enactment of Organic Law 3/2007 of March 22 on the effective equality of women and men, our country is still far from achieving gender balance in key positions within the labor market—whether in capital companies, constitutional bodies, or public administrations. (Plaza Marín, 2018 and 2021).

Indeed, in Spain, despite the fact that over the past two decades the representation of women on the boards of directors of listed companies has increased from 3.5% to 34.5%, gender balance has still not been achieved—female representation must reach at least 40% of board members to meet that standard. According to the thorough study by Pérez Troya, A. (2024), although there has been progress of nearly 30 percentage points over the last twenty years, data published by the CNMV as of May 16, 2024, reveal that out of 117 listed companies, only 42 have reached 40% female board membership. In other words, 75 listed companies still fall short of the required percentage to be considered gender-

[5]Chapters VII to XIII of Organic Law 2/2024, of 1 August.

balanced. Moreover, the role of executive director—the highest-ranking and most powerful board position—is currently held by only 3 women in companies listed on the Ibex 35, and by 15 women across all listed companies (Pérez Troya, 2024).

Despite the far-reaching reform introduced by Law 2/2024 of August 1, aimed at compelling listed companies and constitutional bodies, among others, to fully implement the mandate of balanced gender composition on boards of directors in the private sector and collegiate bodies in the public sector, much work remains to be done to ensure the effectiveness of the fundamental right to gender equality as enshrined in Article 23 of the Charter of Fundamental Rights of the European Union (CFREU).

This is because, as Pérez Troya (2024) notes, the Spanish legislator could have extended the quota system to other types of companies, not just to the largest listed ones. While it is mentioned that the requirement also applies to public interest entities, the reality is that no sanctions are foreseen for their failure to ensure balanced representation on their boards. Nor are there penalties for capital companies that do not extend gender balance to senior management positions, as the law requires.

**Discretionary appointments of judges by the General Council of the judiciary**

Much has been written about the control of discretionary power, the regulated elements involved, and the distinction between discretion and the arbitrariness prohibited by Article 9.3 of the Spanish Constitution. Therefore, this is neither the time nor the place to review the significant doctrinal and jurisprudential contributions on this matter (Fernández Rodríguez, 2012 and 2023–2024).

It is enough to recall that, in the realm of controlling the discretionary power of public authorities, the motivation of discretionary administrative acts is essential. Such motivation must justify the decision in areas where the legislature has granted a space for free, opportunity-based decision-making—rather than one bound strictly by legality (as in regulated acts). This motivation must clearly demonstrate that the decision is not arbitrary—that is, not the product of mere will or administrative whim—but rather the conscious result of a rational choice, based on objective reasons, consistent with the facts, and therefore externally verifiable (Fernández Rodríguez, 2012).

Indeed, I have chosen the topic of judicial appointments by the General Council of the Judiciary (GCJ) to illustrate how we are currently witnessing a regression in the control of the discretion

granted to the GCJ by organic legislation. This regression is clearly visible when we compare the jurisprudence from the early 21st century with more recent rulings. This is because the Third Chamber of the Supreme Court, for reasons unknown, has ceased applying the so-called Maurandi jurisprudence, which includes, among other rulings, STS 4649/2017 of December 19, 2017, Third Chamber, Sixth Section, with Judge Nicolás Antonio Maurandi Guillén as the rapporteur (appeal 416/2017).

In relation to the Charter of Fundamental Rights of the European Union (EUCFR), the chosen topic is relevant due to the infringement of the fundamental right to equality recognized in Article 20, which applies to all individuals. The rulings we will discuss below are not in line with the fundamental right to equality (Article 20 EUCFR), nor with the more specific fundamental right enshrined in the Spanish Constitution (SC) under Article 23.2 CE, which guarantees equality in access to public office. This jurisprudence creates a gap in the case law of the Third Chamber of the Supreme Court, representing a regression in the control of discretion exercised in the judicial appointments made by the GCJ.

The Supreme Court ruling of May 30, 2022, appeal 45/2021, dismissed the administrative litigation against the GCJ's decision of December 17, 2020, which appointed a candidate as President

of the Administrative Litigation Chamber of the High Court of Justice of Asturias. The appointed candidate was a holder of an Administrative Litigation Court, in contrast to another candidate who was a member of the Administrative Litigation Chamber of the TSJ of Asturias and a specialized administrative litigation judge.

The proposal from the Permanent Commission in charge of qualification indicated that both candidates were eligible for appointment, as they met the required qualifications, but it did not include any evaluative**,** critical**,** or comparative elements regarding the candidates' merits. The appeal was based on the lack of evaluation of the merits of the candidate who was not chosen, as well as the absence of motivation in the competitive selection process (FD 2º, section 4, of the aforementioned Supreme Court ruling of May 30, 2022).

This is because, since the Permanent Commission in its proposal considered both candidates to meet the required conditions, the Plenary Agreement of the GCJ should have clarified which objective and non-discriminatory criterion was used to resolve the alleged tie, in order to avoid arbitrariness due to lack of justification, according to the case law of the Supreme Court (SSTS of May 28, 2012, June 26, 2014, May 27, 2017, and May 10, 2016).

However, contrary to the requirements set out in the jurisprudence, the challenged agreement described the merits of both candidates, but without critically comparing them**,** drawing specific conclusions, or justifying why one candidate was chosen over the other. This was despite the fact that two factors set the second candidate apart: (1) from a training perspective, he was a specialist in administrative litigation, and (2) from a professional experience perspective, he was a member of the Administrative Litigation Chamber of the TSJ of Asturias, and had previously served in the same capacity in the Administrative Litigation Chamber of the TSJ of Galicia.

These factors were significant and should have been considered, which rendered the agreement invalid sine it violated the fundamental right recognized in Article 23.2 of the Spanish Constitution (CE). Notably, these two aspects were not evaluated either by the Permanent Commission’s proposal or by the Plenary Agreement of the GCJ, despite being explicitly included in the terms of the call for applications**.**

The Supreme Court ruling of May 30, 2022, which I am commenting on, dismissed the appeal based on the jurisprudence derived from the Supreme Court ruling of December 30, 2020 (rec. 23/2019). It declared that, although the appellant's thesis argued that every proposal in a competitive selection process

must include an explicit comparative evaluation of the merits of the proposed candidate(s) against those not proposed, there is a progressive requirement for greater rigour in the reasoning behind the proposals for the provision of judicial positions "*In no case has our jurisprudence required such a comparative examination of the merits of the candidates, neither in the proposal of the Permanent Commission nor in the subsequent proposal of the Plenary for the filling of the position. Nor have we considered in this jurisprudence that the evaluation of merits should be reflected in numerical grades for the purpose of further objectifying the proposals, as this would imply transforming a discretionary appointment by a constitutional body such as the General Council of the Judiciary into a fully regulated appointment or, in other words, into a regulated merit-based competition in which the decision-making body would have no scope or margin of discretion*" (FD 3º, p. 10).

In my opinion, it makes no sense to design a competitive selection procedure and then distort it by declaring that, in reality, it is sufficient for the evaluation of merits to remain within the reasonableness of the decision, meaning leaving the choice of the determining merits to the discretion of the selection body. The broad discretion of the GCJ (General Council of the Judiciary) dangerously approaches what has been described as

decisions based on mere voluntarism.

**Integration through the right to the protection of personal data**

The approval of the GDPR in 2016 marked a shift in the model of personal data protection**.** In other words, it represented a move away from a model in which individuals negatively affected in the sphere of their data protection rights had to demonstrate a breach of Directive 95/46/EC and the national transposition laws —as well as of the case law of the CJEU, which had long surpassed the legal texts in terms of development—toward a model established by the GDPR. Under this new model, those subject to its provisions are bound by the principle of *accountability* (Piñar Mañas, J.L., and Recio Gayo, M., 2018).

This principle requires data controllers and processors to document everything they do in the area of data protection in order to be able to demonstrate compliance with their obligations in the event of an investigation or sanctioning procedure by the relevant supervisory authority (such as the Spanish Data Protection Agency or, where they exist, regional data protection agencies) (Recio Gayo, 2019).

This is not the only change introduced by the GDPR in shaping

the new model, but detailing those changes is not the purpose of this study, as they have already been extensively discussed in legal scholarship (Piñar Mañas, Álvarez Caro, Recio Gayo, M. (eds), 2016). What I do wish to highlight is that, in the area of personal data protection, the integration of national legal systems as a result of EU law is particularly strong.

However, one thing is the regulatory acceleration within the European integration project regarding personal data protection brought about by the entry into force of the GDPR, and quite another is the actual compliance with the obligations it imposes by public administrations. In the words of González Mendoza, (2023), the processing of personal data continues to be the battleground for public administrations.

Broadly speaking, it can be said that the GDPR imposes three main obligations on public administrations as data controllers:

First, they must appoint a Data Protection Officer (DPO), who acts as the liaison between the data controller and the supervisory authority. The DPO is also responsible for guiding the controller's actions to ensure compliance with the GDPR. The second obligation is to carry out risk assessments when implementing, for example, new technologies that involve the processing of sensitive data, such as biometric data, among others. The third obligation is the creation, maintenance, and

publication—on the website of the respective administration or public entity—of the *Record of Processing Activities*, which has replaced the previous requirement for data controllers to submit files to the Spanish Data Protection Agency.

Well, in relation to the three obligations imposed by the GDPR on public administrations—as well as on the rest of the entities that make up the public sector, in accordance with the subjective scope of Law 40/2015, of October 1, on the Legal Regime of the Public Sector, as set out in Article 2—we observe more instances of non-compliance than those occurring in the private sector.

This is due to several reasons: first, although current regulations increasingly impose obligations on public entities—as well as on companies and professionals in the private sector—public administration staff, including civil servants and public employees, has undergone an unprecedented reduction in recent years. This is partly the result of the *zero replacement rate* policy adopted by the government of Mariano Rajoy, aimed at reducing public debt in the context of the economic crisis that affected Spain from 2008 to 2013; and partly due to retirements and deaths resulting from another crisis—this time the health crisis caused by the COVID-19 virus between 2020 and 2022.

Secondly, it is important to highlight the lack of human and material resources in municipal administrations and in some

public sector entities. Indeed, at present, all public administrations, as well as public sector bodies, are required to comply with the three obligations previously mentioned. However, the reality shows that in small municipalities, the secretary-comptroller often performs both roles—and not just for one municipality, but for several small ones. It is unrealistic to expect that, in addition to the limited number of civil servants available in some municipalities, they can also meet the demands of electronic administration, the principle of transparency, the transparency portal, whistleblower protection mechanisms, and the obligations imposed by the GDPR—while still providing public services to their citizens.

Thirdly, the difference in the sanctioning regime established by the GDPR for non-compliant data controllers or processors—depending on whether they are a public administration or entity, or part of the private sector—has also been a decisive factor in the non-compliance detected within the public sector. In other words, whereas companies and professionals may face substantial financial penalties, the sanction foreseen for the public sector is a formal warning (*apercibimiento*) issued by the Spanish Data Protection Agency (SDPA), and, in the event of non-compliance with that warning, its publication. Moreover, following the publication in the Official Journal of the European

Union (OJ) of a corrigendum to the GDPR, affecting 18 articles and 1 recital—including subsections (a) and (b) of Article 58(2)—the wording was changed: where it previously said "impose sanctions," it now reads "issue."

As a result, the SDPA or the corresponding regional agency may now issue a *warning* when the processing may potentially violate the GDPR [subsection (a)], and may issue a *reprimand* when a violation of the GDPR has occurred [subsection (b)].This explains why it is quite common for public sector non-compliance to raise doubts about the effectiveness of the sanctions—specifically, whether they are truly "effective, dissuasive, and proportionate," unlike those applied to the private sector (Corral Sastre, 2016; González Mendoza, 2023).

In my view, this different sanctioning regime constitutes the Achilles' heel of compliance with the legally imposed obligations on the public sector aimed at guaranteeing the protection of citizens' personal data. This is despite the fact that some authors justify the absence of financial penalties for breaches of the rules governing the processing of personal data on the grounds that: "the objective of this privileged regime is to protect the budget allocations for the achievement of public functions, meaning that a hypothetical infringement could jeopardize the public mission assigned" (Gonzalo Doménech, 2019; Boto Álvarez, 2018).

Although the objective of protecting "the assigned public mission" in the budgets of each public administration is commendable, the reality is that the infringements are not hypothetical, but real. Moreover, they often have minimal consequences for the public offenders, unless the infringement has caused damage, in which case the public administration involved would incur liability for damages (Aberasturi Gorriño, 2013; Nieto Garrido, 2016).

For this reason, in my opinion, the privileged regime granted by the regulations on data protection for infringements committed by the public sector is not appropriate for several reasons: one, because it violates the principle of equality in terms of the regime for infringements and their corresponding sanctions based on the legal nature of the infringing entity; two**,** the sanctions imposed on the public sector do not serve as a deterrent, since they are simply warnings; and three, it deprives citizens of knowing the regulatory compliance of their political leaders, as these warnings are rarely published.

In fact, on the SDPA website, under the section *Public Administrations Sanctioned for Failing to Respond to Requests and for Non-Compliance with Measures*, only 20 cases are listed, of which 13 are municipalities and four are part of the regional

administration,[6] and three are a public urban transport company (from Gijón), the General Directorate of the Civil Guard, and Residential Establishments for the Elderly in Asturias. This gives an idea of the limited publicity surrounding the most frequent non-compliances that exist within the public sector regarding the legally imposed obligations aimed at ensuring the protection of citizens' fundamental right to personal data protection.

## Conclusions

This study focuses on the non-compliance with the legal norms of the EU and the Spanish legal system established in the development of fundamental rights to equality, non-discrimination, and personal data protection. It is true that compliance by public administrations is more widespread than it may seem from reading this work. Many factors contribute to the non-compliance with the rights recognized in the Charter of Fundamental Rights of the European Union (CFREU), which is by no means universal, although it is significant when it occurs.

[6]Andalusian Public Function for Health Research Management in Seville (FISEVI), Department of Education, Culture and Sport of the Government of Aragon, and the Department of Health of the Regional Government of Castilla-La Mancha.

In this study, I have addressed only a few of these factors.

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# Gender equality as a right and a principle: A dual approach to normative and instrumental dimensions

Doi: 10.5281/zenodo.16527737

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## Introduction

Since their earliest steps, European treaties have established gender equality as an essential principle, progressing in a gradual and step-by-step manner. While the Charter of Fundamental Rights of the European Union (the CFREU or the Charter)[1]

[1] CFREU, Official Journal C 364, 18/12/2000 (ELI: http://data.europa.eu/eli/treaty/char_2016/oj). Accessed on 12.07.2025.

represents a major milestone in this area, the Treaty of Amsterdam[2] also played a crucial role by incorporating gender equality as one of its key objectives and by giving it a cross-cutting approach. Despite its limitations, the progress achieved by the Treaty of Amsterdam was significant: from a principle of equality limited only to pay, to a principle of non-discrimination in areas such as conditions of access to employment.

Similarly, equal pay is no longer considered as a tool to prevent unfair competition between economic agents, but as a fundamental right, consolidating its relevance as a pillar in the protection of labour rights. In this way, the mechanisms for the integration of women are constitutionalised at the European level, not only in the economic and productive sphere, but also, with a broader scope, positioning equality as a cross-cutting principle in public policies at both the European and national levels.

This is materialised through the normative commitment of the Member States to its fulfilment. It is important to note that, in this context, the mandate also arises that seeks to ensure that the spaces of power reflect a real and plural diversity, strengthening democratic quality and effectiveness in decision-making through

[2]Treaty of Amsterdam, Official Journal C 340, 10/11/1997 (ELI: http://data.europa.eu/eli/treaty/ams/sign). Accessed on 12.07.2025.

gender parity in decision-making bodies (Martínez-García, Terjesen & Gómez-Ansón, 2024).

The Treaty of Amsterdam was a significant step in the fight against discrimination, establishing the fundamental legal framework which made possible subsequent legislative developments aimed at ensuring equal treatment. In this context, the Treaty of Amsterdam establishes equality as a cross-cutting principle, which facilitates gender mainstreaming in all Community policies. In broader terms, the European Union adopts a comprehensive approach to equality, which implies that, from that moment onwards, the legislator must draw up rules from a perspective that promotes equality in all its areas.

The normative evolution does not end at this point. Indeed, as a result of a parallel development process, both the Treaty of Nice[3] and the Charter (an innovative instrument that initially had no binding force but later became so) were adopted. This document positions equality and non-discrimination as fundamental rights and essential structural principles in the European regulatory framework.

This paper focuses on the analysis of gender equality from a dual perspective: as a right with its own value and content, and as a

[3]Treaty of Nice, Official Journal C 080, 10/03/2001 (ELI: http://data.europa.eu/eli/treaty/nice/sign). Accessed on 12.07.2025.

principle of an instrumental nature. Firstly, equality is established as an objective in itself, understood as a fundamental principle and an inherent right that must be guaranteed and promoted in all spheres of society. Secondly, it is configured as a parameter of conditionality, which implies that its fulfilment is an indispensable criterion for assessing the legitimacy, effectiveness and appropriateness of policies, programmes and decisions. This duality underlines its centrality both as a normative foundation and as a guiding principle in the implementation of measures aimed at eradicating gender inequalities.

## Gender equality as a matter of regulation in the Charter and its normative development

The regulatory model chosen in the Charter is that of an explicit recognition of gender equality in the framework of Chapter III, stating that 'equality between men and women shall be ensured in all areas, including employment, work and pay'[4]. It goes on to state that 'the principle of equality does not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex'. These contents will be maintained in the same wording once the Charter acquires normative value with the reform of the

[4]Article 23.1.

Treaty of Lisbon[5].

Indeed, since the Treaty of Lisbon, equality and non-discrimination have taken on a more prominent role on the European board, and the binding nature of the Charter has also been recognised. Thus, the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter have become the triad of binding legislation in this area.

The TEU marks the starting point for gender equality, so that the TFEU then establishes the Union's obligation to integrate the gender perspective in all its policies and activities, ensuring that the promotion of gender equality is a cross-cutting objective, and it is also clear that the Union will support and complement the action of the Member States in the area of gender equality in terms of opportunities on the labour market and treatment at work. The normative map closes with a classic mention, that of the recognition of the right to equal pay for equal work or work of equal value. The undeniable connection between the TEU and TFEU, as a source of inspiration, and article 23 of the Charter is made clear in the Explanations on the Charter[6].

[5]Treaty of Lisbon, Official Journal C 306, 17/12/2007 (ELI: http://data.europa.eu/eli/treaty/lis/sign). Accessed on 12.07.2025.

[6]It is noted that the first paragraph of article 23 is based on Articles 3 of the

There is no doubt that the dual dimension of the Charter, in relation to gender equality, takes on a meaning that combines its intrinsic value with its instrumental character. On the one hand, equality is established as an objective in itself, i.e. as a fundamental principle and an inherent right to be guaranteed and promoted in all areas of society. On the other hand, it is configured as a parameter of conditionality, which implies that its fulfilment becomes an indispensable criterion for assessing the legitimacy, effectiveness or appropriateness of policies, programmes and decisions. This duality reinforces its centrality as a normative foundation and as a compass for the implementation of measures aimed at eliminating gender inequalities.

The first of these positions encompasses, in turn, two different scenarios. In the first scenario, gender equality is constituted as an object of specific regulation, being the main subject of

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TEU, and 8 and 157 (paragraphs 1 and 3) of the TFEU. Regarding the second paragraph, it briefly reflects Article 157(4) of the TFEU, which establishes that the principle of equal treatment shall not prevent the maintenance or adoption of measures providing specific advantages to facilitate the professional activity of the underrepresented sex or to prevent or compensate for disadvantages in professional careers. The explanatory text concludes by stating that the second paragraph of article 23 shall not alter the content of Article 157(4) of the TFEU.

legislative intervention. This approach implies direct normative action that seeks to guarantee equality through the implementation of policies and legal provisions aimed at explicitly addressing inequalities. In the second scenario, equality takes on a cross-cutting dimension, where it indirectly affects other material areas. In this setting, gender equality is not the central issue of regulation but is integrated as a guiding principle to be considered in the development of rules and policies in various areas, such as employment, education, health, international protection or new technologies, ensuring that the measures adopted do not perpetuate or aggravate existing inequalities. Let us consider both scenarios.

The first scenario places us, as noted above, in an area - that of fundamental rights - in which the EU does not have its own normative competences. This competence, in general terms, continues to fall to the Member States. The Charter does not give the EU an autonomous competence to legislate on fundamental rights (Carmona, 2016). However, it establishes a normative framework that restricts and guides the exercise of public powers, ensuring that their action respects and protects fundamental rights in all areas of application.

In addition, the EU's powers to regulate certain fundamental rights in specific areas (such as in the area of non-discrimination,

as established in Art. 19 TFEU) allow it to intervene in this area. On this legal basis, the EU has regulated gender equality not only in matters related to equal treatment in employment or pay, but the directives approved in recent years address challenges in areas related to equal representation in decision-making bodies, reconciliation or gender-based violence.

One of the regulatory bases of this framework is Directive 2010/41[7], which establishes equal treatment between self-employed men and women. It recognises the importance of social protection for self-employed women, including maternity cover. This protection becomes essential to ensure that women can develop their economic activity without being at a disadvantage compared to men because of their role in motherhood and family. Along these lines, Directive 2019/1158[8] introduces aspects that become the backbone for the reconciliation of work and family

[7]Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15/7/2010. ELI: http://data.europa.eu/eli/dir/2010/41/oj). Accessed on 12.07.2025.

[8]Directive (EU) 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12/7/2019. ELI: http://data.europa.eu/eli/dir/2019/1158/oj). Accessed on 12.07.2025.

life. By regulating non-transferable parental leave, the EU seeks to balance the responsibility of care between men and women. The final objective is to ensure that motherhood does not penalise mothers' professional careers, with the aim of promoting co-responsibility in the home, generating better job opportunities for women.

The pay gap between women and men has also been addressed in recent European legislation, namely Directives 2023/970[9] and 2022/2041[10]. The former establishes transparency measures, obliging companies to disclose information on their remuneration systems and ensure equal pay for work of equal value (Roqueta, 2023; Rodríguez, 2023).

Directive 2022/2041 seeks to ensure that minimum wages are adequate and sufficient, a key factor in reducing the feminisation of poverty, as women are over-represented in lower income

[9]Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (OJ L 132, 17/5/2023. ELI: http://data.europa.eu/eli/dir/2023/970/oj). Accessed on 12.07.2025.

[10]Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union (OJ L 275, 25/10/2022. ELI: http://data.europa.eu/eli/dir/2022/2041/oj). Accessed on 12.07.2025.

sectors. An over-representation that turns into an under-representation of women in leadership positions, an issue that is precisely regulated in Directive 2022/2381[11].

The axis on which the strategy designed by this last directive pivots is that of establishing minimum quotas to increase the presence of women on the boards of directors of large companies. The aim is precisely to correct the under-representation in positions of power, so that, in a chain of actions, women are involved in business decision-making (Kavalieraki-Foka, Asonitou, Kottara, Gonidakis, & Giannopoulos, 2024).

In the field of binding legislation, it is important to mention, finally, the recent Directive 2024/1500[12] which, although it can be considered as an institutional rule because it refers to the legal regime of the EU equality bodies, it assumes a central role by

[11]Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures, known as Directive Women on board (OJ L 315, 7/12/2022. ELI: http://data.europa.eu/eli/dir/2022/2381/oj). Accessed on 12.07.2025.

[12]Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation and amending Directives 2006/54/EC and 2010/41/EU (OJ L, 2024/1500, 29.5.2024. ELI: http://data.europa.eu/eli/dir/2024/1500/oj). Accessed on 12.07.2025.

giving these bodies greater independence, allocating greater resources and recognising more competences, among which the possibility of investigating cases of inequalities and issuing binding decisions on equality issues is of relevance[13].

Although all of the above is framed in a binding normative context, the framework cannot be considered complete without referring to the soft law adopted on gender equality in the EU. Such is the case of the Strategies for Gender Equality 2020-2025[14] and 2024-2029,[15] with which I would conclude the section on legal instruments that directly address gender equality. The first of these focused on consolidating the progress made in previous stages, and included mentions of inequalities in employment, women's labour rights, education and health.

The 2024-2029 Strategy aims to (1) prevent and combat gender stereotypes and sexism, and violence against women and girls as

[13]The deadline for transposition by the Member States is June 19, 2026.

[14]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Union of Equality: Gender Equality Strategy 2020-2025. COM/2020/152 final. (URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0152). Accessed on 12.07.2025.

[15]Council of Europe (Gender Equality Commission-GEC), Gender Equality Strategy 2024-2029, CM(2024)17-final [1491/4.3a], 06/03/2024 (URL: https://search.coe.int/cm?i=0900001680ae569b). Accessed on 12.07.2025.

well as domestic violence; (2) guarantee women and girls equal access to justice; (3) achieve balanced participation of women and men in political, public, social and economic life; (4) ensure women's empowerment and gender equality in relation to global and geopolitical challenges; and (5) achieve gender mainstreaming and include an intersectional approach in all policies and actions.

**Gender equality as a cross-cutting issue: The case of asylum procedures**

In the second scenario, we will focus our interest on the analysis of a material area in which equality, without being the central axis of the regulation, acquires a particular relevance due to the impact it can have on the normative content. In this context, the cross-cutting application of gender equality can reshape its content. This is the case when the application of the norm generates differentiated effects between different groups or individuals, as occurs, among others, in the regulation on asylum[16].

[16]The fact is that legislation adopted in the EU in other sectoral areas frequently includes references to the principle of equality between women and men, as well as to article 23 of the Charter. Examples from other fields include education (Regulation EU 2021/817 of the European Parliament and

Asylum procedures have historically lacked a gender perspective, applying criteria that do not take into account the specific forms of persecution suffered by women and girls. While traditional regulations have facilitated the protection of those fleeing for political or religious reasons, gender-based violence, human trafficking or forced marriages have been sidelined and excluded from recognition as legitimate causes of persecution.

This failure is not only evidence of a gap in the implementation of gender equality, but has also placed many people in a vulnerable situation, forcing them to overcome additional obstacles in order to obtain the recognition and protection they need (Zelaia, 2022).

The incorporation of asylum into the EU's competences following the Treaty of Amsterdam was a milestone in the

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of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation EU n. 1288/2013), the free movement of workers (Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers), and artificial intelligence (Regulation EU 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations EC n. 300/2008, EU n. 167/2013, EU n. 168/2013, EU 2018/858, EU) 2018/1139 and EU 2019/2144 and Directives 2014/90/EU, EU 2016/797 and EU 2020/1828 -Artificial Intelligence Act-).

evolution of EU asylum policy, reformulating the regulatory framework and strengthening coordination between the Member States in this area.[17] The progressive consolidation of the Area of Freedom, Security and Justice (AFSJ) has favoured the communitarization of the right to asylum, establishing it as a fundamental pillar of EU policy. According to article 78 of the TFEU, the Union is responsible for developing a common policy on asylum, subsidiary protection and temporary protection, ensuring an appropriate status for third-country nationals in need of international protection and guaranteeing respect for the principle of non-refoulement. This is in line with the provisions of the Geneva Convention of 28 July 1951, the New York Protocol of 31 January 1967 relating to the Status of Refugees, the ECHR and the CFREU, in particular articles 18 (right of asylum) and 19 (protection against refoulement, expulsion and extradition)[18].

[17]This communitarization is being carried out through a progressive strategy, as articles 61 and 63 of the TEC referred to a transitional period of five years for achieving the objective. The Tampere Council provided the final impetus for the creation of the CEAS (Common European Asylum System), by designing a coordinated policy on immigration and asylum.

[18]Certainly, the ECHR (European Convention on Human Rights) does not explicitly recognize the right to asylum, but a broad interpretation of articles 3, 5, 6, and 8 has allowed for the development of a body of case law

The construction of the Common European Asylum System (CEAS) has given the EU a predominant role in the formulation of immigration and asylum policies, which has reduced the regulatory autonomy of the Member States in this area (González, 2017; Lutz & Caballero-Vélez, 2024). The integration of asylum policy at the EU level has been carried out through secondary legislation, which, over the years, has given rise to a regulatory framework based on regulations and directives,[19]

relevant to rights linked to international protection (beginning with the ECtHR judgment of October 9, 1979, Case of Airey v. Ireland. URL: https://hudoc.echr.coe.int/eng?i=001-57420). Accessed on 12.07.2025.

[19]The complex regulatory framework of secondary law, up until the adoption of the most recent legislative package on the matter in May 2024, was composed of the following legal instruments (some of which are amended by the new legislative package): Directive 2011/95/UE (standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiarity protection, and for the content of the protection granted); Regulation (EU) 603/2013 ('Eurodac' for the comparison of fingerprints);Regulation (EU) 604/2013 (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person).

To this regulatory divergence must be added the migratory pressure from 2014 onwards, which prompted the EU to act proactively with the aim of consolidating the effective implementation of the CEAS as a priority. In this

among which Directives 2013/32 on asylum procedures[20] and 2013/33 on reception conditions occupy a prominent position.[21] Gender equality in article 23 of the Charter is present in the first of these, in a double consideration: on the one hand, it is included in a generic mention, as one of the fundamental rights to be

context, Regulations 514/2014 and 516/2014 were adopted. However, the adoption of these regulations coincided with the migration crisis, and their effectiveness was limited. Consequently, the Council adopted two specific decisions to address some of the most pressing situations: Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (not in force, date of end of validity: 26/09/2017); and Decision (EU) 2017/342 of the European Parliament and of the Council of 14 December 2016 on the mobilisation of the Flexibility Instrument to finance immediate budgetary measures to address the on-going migration, refugee and security crisis.

For its part, the Council of Europe simultaneously adopted the Strategic Guidelines for legislative and operational programming (June 2014), and the European Commission approved the European Agenda on Migration (May 2015). Both initiatives aimed to promote coordination between the internal policies of the Member States and those of the EU, as the only means to achieve a robust asylum policy.

Actions in this area continued up to the adoption of the New Pact on Migration and Asylum by the Commission on September 23, 2020. The proposal established a comprehensive common European framework for the management of asylum and migration. To this end, it was based on a series

respected[22] and, on the other, in a more explicit way, in a reference to the need to guarantee substantive equality between applicants of both sexes, it is stressed that assessment procedures must incorporate the gender perspective, especially in those personal interviews in which applicants have to explain their experiences in cases of persecution for gender reasons.[23]

Directive 2013/33 incorporates greater specificity with regard to procedures. It begins with a generic reference to the equal treatment of applicants, and then refers to the specific situation of

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of legislative proposals aimed at: establishing a common framework to support a holistic approach to asylum and migration management; making the system more efficient and more resilient to migratory pressure; eliminating pull factors and secondary movements; combating abuse; and providing greater support to the most affected Member States.

[20]Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. ELI: http://data.europa.eu/eli/dir/2013/32/oj. Accessed on 12.07.2025.

[21]Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. ELI: http://data.europa.eu/eli/dir/2013/33/oj. Accessed on 12.07.2025.

[22]Directive 2013/32, Whereas clause 60: joint reference to articles 1, 4, 18, 19, 21, 23, 24 and 47 CFREU.

[23]Ibidem, Whereas clause 33.

vulnerable persons, including pregnant women, victims of trafficking, persons who have been raped or victims of female genital mutilation.[24]

Finally, it is noteworthy that it refers in a novel way to the obligation of Member States to take appropriate measures to prevent harassment and acts of gender-based violence, including sexual violence and harassment, in the premises and reception centres offered to persons seeking international protection. In fact, this is not a ground for initiating the protection procedure but a special consideration for when the applicants have already obtained such protection and are in the custody of the public administration in the centres authorised for this purpose.[25]

It is in this scenario of implementation of the CEAS that the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)[26] landed *ex novo* in 2014, where the CFREU had already been installed with binding force. The gender blindness in asylum procedures in international regulations was corrected

[24]Directive 2013/33, Whereas clause 8 and art. 21, respectively.

[25]Ibidem, art. 18.4

[26]Council of Europe Convention on preventing and combating violence against women and domestic violence (entry in force 01/08/2014). https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210. Accessed on 12.07.2025.

with the gender lenses provided by the Istanbul Convention and, in the absence of an exhaustive analysis of the causes provided in the files by women asylum seekers in the context of the States signatories to the Convention, it can be said that the increase in women's applications leads to a positive assessment *ab initio* of the channel opened by the Convention[27].

As already mentioned, the somewhat disharmonious regulatory situation on the European scene has led to the adoption by the European institutions in May 2024 of a package of ten legal instruments reforming the European framework for asylum and migration management[28] (Carrera, Karageorgiou, Ovacik & Tan,

[27]Istanbul Convention, art. 60.

[28]Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU; Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148; Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147; Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013; Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU)

2025). Directive (EU) 2024/1346[29] and Regulation (EU) 2024/1347[30] will be the centrepieces of this multifaceted legislation, amending the 2013 Directives. If we add to this the fact that, in 2023, the EU acceded to the Istanbul Convention,[31] we are faced with a new area in which the sectoral legislation on asylum procedures is cross-cut by the Convention, on the one

2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders; Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817; Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council; Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147. In addition to the eight mentioned above, the two mentioned below are added.

hand, and by the CFREU, on the other. It is therefore a question of contrasting whether the new regulations have observed the contents of the latter in relation to gender equality, projecting it in the inclusion of the gender perspective in the causes of applications for international protection and in the application of reception measures.

[29]Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection. ELI: http://data.europa.eu/eli/dir/2024/1346/oj. Accessed on 12.07.2025. This Directive establishes rules for the reception of applicants for international protection in Member States and amends Directive 2013/33/EU.

[30]Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council. ELI: http://data.europa.eu/eli/reg/2024/1347/oj. Accessed on 12.07.2025. This Regulation lays down rules on the requirements for the recognition of third-country nationals or stateless persons as beneficiaries of international protection, as well as a uniform status for refugees or persons eligible for subsidiary protection and the content of the international protection granted.

[31]In 2023, EU signed the Istanbul Convention through the following decisions: Council Decision (EU) 2023/1075 of 1 June 2023 on the

Both standards complement each other in terms of content and even have an impact on the same considerations with regard to groups with specific needs. Directive (EU) 2024/1346 recognises, from the outset, an approach to reception that is sensitive to situations of vulnerability that may affect women, in line with the protection of human dignity and fundamental rights.[32] To this is added the recognition that women applicants for international protection are persons of particular vulnerability, which requires the design of measures to ensure their safety and well-being.

The Directive identifies particular vulnerability with the category of applicants with special reception needs, including pregnant women, victims of trafficking or sexual violence, persons who have suffered torture, rape or other serious forms of

conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union (ELI: http://data.europa.eu/eli/dec/2023/1075/oj Accessed on 12.07.2025) and Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement (ELI: http://data.europa.eu/eli/dec/2023/1076/oj).

[32]Directive 2024/1346, Whereas clauses 9, 38 and 75.

psychological, physical or sexual violence, e.g. victims of gender-based violence, female genital mutilation, child or forced marriage, or violence committed on sexual or gender-based grounds, categories which are repeated in Regulation (EU) 2024/1347.[33]

The Directive underlines, among other observations, the need for safe spaces in reception facilities for women and their minor children,[34] as well as the obligation to accommodate men and women separately in detention centres, except with consent in family cases.[35] Access to medical care, psychosocial assistance and legal counselling for victims of gender-based violence and other forms of abuse is also prioritised.[36]

For its part, the starting point of Regulation (EU) 2024/1347 is clear: it seeks to ensure that Member States apply uniform criteria to identify persons genuinely in need of international protection, as well as to ensure that persons benefiting from such protection have a common set of rights in all Member States.[37] However, in addition to the identification with uniform criteria, the treatment granted to persons covered by the Regulation must

[33]Directive 2024/1346, art.24 and Regulation 2024/1347, arts. 20.4 and 32.2.

[34]Directive 2024/1346, art. 20.5.

[35]Ibidem, art. 13.5.

[36]Ibidem, Whereas clauses 47 and 75, art. 28.

[37]Regulation 2024/1347, Whereas clause 7.

be respectful of the obligations established in the instruments of international law in which the Member States participate, with special emphasis on those that prohibit discrimination.[38]

Of particular relevance is the incorporation of 'membership of a particular social group' as one of the grounds of persecution that can be used in the application for protection.[39]

The Regulation itself stresses the need to introduce a common concept among all Member States of this ground of persecution and, in this regard, makes it clear that 'for the purpose of defining a particular social group, due account should be taken, insofar as they are related to the applicant's well-founded fear of persecution, issues related to the applicant's sexual orientation or gender, including gender identity and gender expression, which may be linked to certain legal traditions and customs from which, for example, genital mutilation, forced sterilisation or forced abortion may result'.[40]

The new European legislation has only just begun to take shape. European and national public policies are trying to adapt to the current migration crisis, in a context in which migrant women are in a situation of extreme vulnerability. The fact that European regulations include a gender focus in their procedures makes it

[38]Ibidem, Whereas clause 12.

[39]Ibidem, art. 10.1.d.

[40]Ibidem, Whereas clause 40.

possible to go beyond supposedly neutral patterns to others in which respect for gender equality requires the adoption of measures that grant differentiated treatment to women involved in international protection procedures.

**Gender equality as a parameter of conditionality: The case of NEXTGENEU**

The second role of the Charter is centrally anchored in Regulation 2020/2092,[41] which establishes a conditionality regime for the protection of the EU budget linked to the rule of law, a concept which includes the content of the Charter (Gamarra, 2022). The question to be addressed is whether the regulation governing the NextGenEU Funds, which establishes the conditionality of respect for fundamental rights, has an impact in its own body of rules on policies to promote gender equality (Zelaia, 2023). There is no doubt that the priority axis of the Funds is that of economic recovery and that the others revolve around it (Alcidi & Gros, 2020).

[41]Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. ELI: http://data.europa.eu/eli/reg/2020/2092/oj. Accessed on 12.07.2025.

The incorporation of social issues has been secondary, as can be seen in the design of the priority challenges (O´Dwyer, 2022). Despite the fact that equality is one of the four guiding principles of the Member States' plans, the attention paid to social development and inequality issues has been limited (Klatzer & Rinaldi, 2020). Firstly, mentions of these issues in the texts are vague and not very specific; furthermore, funding quotas are not detailed, as it is assumed that they depend on the particularities of each state (Chiodi, 2020).

Precisely one of the critical interpretations of the structure of the NextGenEU Funds is determined by this issue. On the one hand, the weak incorporation of social aspects (for example, public policies of a social nature) and, on the other, the extraordinary economic injection into specific sectors of the industrial and business fabric. In short, this means that the state is taking on a model of indebtedness that will be used primarily to clean up the private productive sphere, with the loss of an extraordinary opportunity to revalue the welfare state and its public services.

The challenge of social and economic recovery has been launched, but not only that. On this occasion, the EU has the challenge of providing the necessary means to overcome the crisis, but also the opportunity to show itself as a structure whose governance model is not limited to its regulatory and managerial

function but also fulfils a redistributive function that seeks greater social integration in the EU (Ladi & Tsarouhas, 2020).

The European crisis exit proposal will also be evaluated in terms of the stability of the European integration project and respect for its founding values. It will be these indicators that will determine whether solidarity, national responsibility and wise EU management have been correctly combined (Fasone & Simoncini, 2024).

Gender mainstreaming in the design of the NextGenEU Funds strategy has suffered a similar fate to that of social issues. Although all the objectives are perfectly permeable to a gender perspective, i.e. they lend themselves to a gendered reading, gender mainstreaming is absent (Klatzer & Rinaldi, 2020). Hence, from an analysis of the type of measures adopted, it is not difficult to disentangle the reading of the crisis framework by the European institutions. And the fact is that, given that crises are gendered, the political responses adopted through the NextGenEU Funds show little sign of commitment to gender equality, as recognised in article 23 of the Charter and in the EU Gender Action Plan (Rubery & Tavora, 2021).

Not surprisingly, from the outset of discussions on recovery mechanisms, priority was given to sectors of production occupied primarily by men, even though female-dominated sectors had

been more affected by the pandemic and by the lockouts ab initio (O´Dwyer, 2022). This meant that women were immediately placed in a position of vulnerability from the onset of the pandemic (EIGE, 2025).

Breaking down the aspects of the regulation, mentions of gender equality are not frequent in Regulation (EU) 2020/2094, even though it is one of the priorities, at least at the theoretical level, of these Funds (Elomaki & Kantola, 2023). More vaguely, 'inequalities' are mentioned in general terms. For their part, the guidelines addressed to the Member States on the implementation of state recovery plans include more precise references to gender equality.

At this level, the references are substantially: equal treatment and opportunities at work, working conditions and professional promotion; the right to equal pay, equal treatment and opportunities in terms of social protection, education and access to public goods and services, and equal opportunities for under-represented groups.

More specifically, it states that recovery and resilience plans submitted by Member States must necessarily contain 'an explanation of how the measures in the recovery and resilience plan are expected to contribute to gender equality and equal opportunities for all, as well as the integration of such objectives,

in line with principles 2 and 3 of the European Pillar of Social Rights, with UN Sustainable Development Goal 5 and, where relevant, with the national gender equality strategy'.[42]

Beyond the literality of the incorporation of the terms in the regulatory rules, the focus on male-dominated productive sectors is prima facie more intense. The gender bias that marks the prioritisation of employment sectors such as research and innovation, energy, agriculture, construction and transport is visible in Regulation (EU) 2020/2094. In this respect, the counterpart is referred to in Regulation (EU) 2020/2221 ReactEU by placing the focus on sectors with a greater positional dominance of women, such as hospitality industry, tourism and culture, and an attempt to correct the previous gender bias can be seen (EIGE, 2025).

On this point, one of the core issues will be the determination of the procedures for the control and monitoring of state actions in terms of compliance with gender equality. Thus, the very control and guarantee systems that operate within the state will be those that must be enabled to exercise this control activity, without the creation of ad hoc procedures or bodies to fulfil this function

[42]Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, art. 18.4. ELI: http://data.europa.eu/eli/reg/2021/241/oj. Accessed on 12.07.2025.

being envisaged. From a perspective that demands a comprehensive approach and treatment of gender equality, this formula, at least on a theoretical level, could be reasonable, provided that the control carried out ad hoc within the State is reviewed by the European Commission, as guarantor of compliance with EU law and its values.

**Conclusions**

Compliance with the CFREU is simultaneously an objective in itself and a tool to achieve other goals within the European project. Its dual role reinforces the cohesion between the EU's fundamental values and strategic priorities. Ensuring a balance between these approaches is essential to preserve the credibility and effectiveness of the Charter as a pillar of European law. Only a coherent and balanced implementation of the Charter can ensure that it remains a vital instrument for the promotion of fundamental rights and European integration.

Compliance with the Charter must therefore be a priority both for EU policies and regulations and for those adopted by the Member States. The arrival of the recognition of gender equality in the CFREU is a milestone that makes it possible to consider the consolidation of equality as a fundamental pillar for the integration of a European society. The fact is that discrimination

(in its full extent, occupational and social) and the scourges (such as violence against women) of today's societies are tied to the axis of structural inequality. It is this structural aspect of inequality that is being tackled through normative instruments such as the Charter and EU secondary legislation, but also through state legislation, either directly, by regulating equality as a subject, or indirectly, with a strategy of mainstreaming.

The approval of the Charter, but above all the acquisition of its binding nature, marked one of the main milestones, consolidating gender equality in the EU, and constituting the regulatory triad together with the TEU and the TFEU to reinforce the mainstreaming of gender equality in all Community policies and actions. In the same vein, secondary legislation has extended and strengthened the rules on equal treatment and positive action. As a result, this regulatory process goes beyond the initial sectoral approaches and establishes a solid framework for gender mainstreaming in all EU spheres.

Gender equality fits into the conception of dynamic or liquid fundamental rights, which should permeate the institutional and normative structures of the EU. This permeability implies that rights are not static and do not fulfil a single role, but must adapt and expand according to social and legal developments. It is a right that should flow in those administrative and legislative

procedures that under a cloak of neutrality hide discriminatory biases against women, such as in asylum and international protection procedures. The latter area has been gender mainstreamed in the recent legislative package adopted in 2024, namely in Directive (EU) 2024/1346 and Regulation (EU) 2024/1347, which deserve a positive preliminary assessment, pending the transposition of the directive and the implementation of the regulation on the ground.

Finally, the role of the Charter as a condition for ensuring that Member States respect fundamental rights in accessing European funds is decisive, as it establishes a framework of guarantees that obliges Member States to comply with rights such as gender equality, promoting responsible management that is aligned with democratic values and the rule of law. This new requirement in the management of funds gives rise to a renewed governance model between the EU and the Member States, which replaces conflictual governance with a more collaborative approach, aimed at proactively anticipating and resolving possible tensions before they turn into institutional conflicts.

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